

Exhibit 1



INSTRUCTIONS TO RESPONDENTS

THE ATTACHED SOLICITATION SHOULD BE RETURNED AS FOLLOWS:

All responses for Solicitation No. 601440000040183 must be received before the hour and date specified 8/7/2023 3:00 PM

All reference to time in the solicitation shall mean Central Time.

Email responses must be sent to PRO_Bids@txdot.gov. Email responses must not exceed 20 MB and be in portable document format (PDF) or Excel format for pricing schedules, signed by respondent, and attached to the email to be considered for award. Emails exceeding 20 MB must be sent to PRO_Bids@txdot.gov through managed file transfer services such as, but not restricted to, Dropbox™. TxDOT will not be responsible for failure of electronic equipment, operator error, server delays, or system outages. Responses that are late, illegible, incomplete, file corrupted, flagged as a virus, or otherwise non-responsive will not be considered.

Respondent must place the following in the subject line of their email submission: Solicitation Number, Company Name.

The response must be sent only to PRO_Bids@txdot.gov. Any response sent to any email address other than PRO_Bids@txdot.gov - whether directly, courtesy copy (cc), or blind copy (bcc) - will be considered non-responsive.

For hand delivery or courier service, United States Postal Service, Federal Express, United Parcel Service, or other mail delivery service, contact the purchaser for assistance.

USE OF NATIONAL INSTITUTE OF GOVERNMENTAL PURCHASING CODE

The Texas Department of Transportation (TxDOT) uses the National Institute of Governmental Purchasing, Inc., (NIGP) code to standardize purchases by conforming to the class, item, and group structure of the code. The NIGP code is used to select vendors for our master vendor file from the Texas Comptroller of Public Accounts (CPA) Centralized Master Bidders List (CMBL).

New suppliers and other vendors wishing to furnish materials, equipment, supplies and services to TxDOT should apply to be on the CMBL to receive bidding opportunities.

Existing TxDOT vendors need only be concerned that the information listed on the CMBL file is correct, and that the applicable NIGP class and item are selected for those you can provide.

CMBL information is available online at: <https://comptroller.texas.gov/purchasing/vendor/cmbll/> or by phoning 1-512-463-3459.

Early Payment Program - TxDOT is offering an important program to all respondents that provide prioritized invoice processing and payments (prior to the 30th day after receipt of a correct invoice). The program provides enrolled vendors enhanced benefits from improved invoice processing to priority handling to cash advancement and technology efficiencies.

Respondents offering a cash discount in exchange for TxDOT's priority invoice processing and early payment agreement should complete and return the attached form entitled "Priority Invoice and Early Payment Program" with the response.

Additional information may be found at the following website: <http://www.txdot.gov/business/vendors/epp.html>



Request for Proposal
Employee Search and Recruitment Services

Solicitation No. 601440000040183

NIGP Class-Item: 961-30

Purchaser: Jennifer Weiss, CTCD

Solicitation Calendar of Events	
Estimated Solicitation Posting Date:	7/10/2023
Non-Mandatory Pre-Response Conference:	7/17/2023
Deadline for submission of questions: Reference Paragraph 10 – Contact Information	7/18/2023
TxDOT Response to Questions to be posted by:	7/25/2023
Solicitation Due Date:	8/7/2023
Tentative Date for Contract Award:	9/12/2023

1. Description of Services: This solicitation is to establish a contract for employee search and recruitment services to assist the Texas Department of Transportation (TxDOT) in recruiting candidates meeting the qualifications and experience requirements for various positions, on an as needed basis. TxDOT will contact the vendor when services are needed and provide the details for the job vacancy, at that time.
2. Term of Service: The initial term of the contract shall commence upon execution for a period of one year with the option to renew for three one-year periods at TxDOT's sole discretion. TxDOT will provide an intent to renew, in writing, a minimum of 30 days prior to expiration of the current term.

NOTE: The dates, list below, are estimated and based on the anticipated award date of the contract.

Initial term	September 12, 2023 through September 11, 2024
1st Renewal Option	September 12, 2024 through September 11, 2025
2nd Renewal Option	September 12, 2025 through September 11, 2026
3rd Renewal Option	September 12, 2026 through September 11, 2027

3. Electronic State Business Daily (ESBD): This solicitation is posted on the ESBD. It is the responsibility of the respondents to be active on the CMBL to receive notifications regarding addenda or additional information related to the solicitation..
<http://www.txsmartbuy.com/esbd>
4. Order of Precedence: In the event of any conflict, terms contained in the document shall prevail in the order as listed below:
 - 4.1. Solicitation No. 601440000040183
 - 4.2. Statement of Work (SOW), TxDOT 961-30-40183, Dated May, 2023
 - 4.3. TxDOT Terms and Conditions, June, 2022
 - 4.3.1. Payment will be made in accordance with Part 4, Para. 4.04 (b)
 - 4.3.2. With the following exceptions to Terms & Conditions
 - 4.3.2.1. Paragraph 2.02 (k) replaced with: The response, including price, is irrevocable for 120 calendar days following the hour and date specified for the solicitation opening. TxDOT may extend this period with respondent's written agreement.
 - 4.4. Pricing Schedule
 - 4.5. Execution of Proposal
 - 4.6. HUB Subcontracting Plan
5. Work Hours:
 All work by the successful respondent must be performed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on regularly-observed state and federal holidays.

6. Insurance Requirements: The respondent must provide to TxDOT an executed Certificate of Insurance for Services, Form 1950, per TxDOT Terms and Conditions, Part 5, within seven business days of request by TxDOT.

7. Estimated Quantities

Quantities are estimates only to be used for the purpose of comparing responses. The respondent must enter their unit price on Pricing Schedule. Total price will be evaluated by multiplying the unit price for each line by the estimated quantities listed on Pricing Schedule.

TxDOT will order only the amount needed to satisfy operating requirements; no guarantee of any minimum or maximum purchase is made or implied. Total amount ordered must not exceed the aggregate contract amount unless additional funds are allocated, and the total contract amount is increased in accordance with the terms and conditions.

8. Price Adjustments

Prices may be adjusted annually when correlated with index below at successful respondent(s) request; acceptance is at the sole discretion of TxDOT. Successful respondent must provide supporting documentation to justify all price increase requests. Any request submitted by the successful respondent that fails to use the formula as indicated below for calculating the price increase will not be considered a complete, properly-submitted price increase request. Unless otherwise indicated, the price index below is the specified index as published by the Bureau of Labor Statistics, Washington, DC 20212.

Index to be used: Consumer Producers Index – Wage Earners and Clerical Workers (CPI-W)

BLS website: <https://www.bls.gov/data/>

When using the most recent monthly information from the index, the following applies:

A = Index from the month of the due date for the response, or of the month of last price increase

B = Current or latest baseline index posted at the time of respondent request or TxDOT decision to adjust price.

The allowable percent change must be calculated as follows:

$$(B-A) \div A \times 100 = \text{Percent of allowable price increase.}$$

The allowable percent change shall be rounded to the nearest one-hundredth of one percent and shall be the maximum unit price adjustment permitted, except that the respondent may offer price decreases in excess of the allowable percent change.

The respondent may offer price decreases in excess of the allowable percent change at any time during the term of the contract.

9. Texas HUB Subcontracting Plan

TxDOT has determined that subcontracting opportunities are probable in connection with this solicitation (Reference Attachment B).

10. Contact Information

The individuals listed below are the only authorized TxDOT contacts. **Contacting any other TxDOT personnel regarding this solicitation, may result in the respondent**

being disqualified. Any changes as a result of questions will be made by TxDOT in the form of an addendum to the solicitation; no oral changes will be considered.

For clarification or questions regarding this solicitation, respondents may contact:

Primary Contact: Jennifer Weiss, CTCD
Phone: 325-307-6278
Email: Jennifer.Weiss@txdot.gov

Secondary Contact: Tami Elias, CTCD, CTCM
Phone: 512-839-9434
Email: Tami.Elias@txdot.gov

When submitting questions through vendor discussion, the vendor must include the name of the document and paragraph number related to the question.

11. Pre-Response Conference

TxDOT will conduct a non-mandatory pre-response conference for all interested respondents to familiarize them with the requested goods and/or services and to give all potential respondents an opportunity to seek answers to any questions which they may have concerning the solicitation.

Respondents should arrive not later than the scheduled start time stated in the solicitation. TxDOT will not be responsible for repeating information already provided.

Respondent should have a representative attend the pre-response conference. Respondent's representative must sign a register.

Any changes to the solicitation requirements resulting from the pre-response conference will be made by TxDOT in the form of an addendum to the solicitation.

The pre-response conference information is shown below:

All personnel attending the pre-response conference must log in to WebEx using the following steps:

Respondent must list their name and company when attending the WebEx, as shown below:

Example: John Doe – TxDOT

Meeting number: 231 407 35443

Meeting password: DbwSsUVh894

WebEx Link:

<https://txdot.webex.com/txdot/j.phpMTID=m3df489539c0c1602fcb14806a80b99e5>

Call-in number: 1-415-655-0003 United States

IMPORTANT NOTICE: Please note that this WebEx service allows audio and other information sent during the session to be recorded, which may be discoverable in a legal matter. By joining this session, you automatically consent to such recordings. If you do not consent to being recorded, discuss your concerns with the host, or do not join the session.

12. Financial Requirements

Be in good financial standing and current in payment of all taxes and fees such as state franchise fees.

Vendor must have the financial capacity to perform the requirements in accordance with the contract. TxDOT will review the vendor's audited or un-audited financial statement in accordance with Texas Government Code, Title 10, Subtitle D, Section 2156.007, to evaluate the vendor's financial stability.

Consolidated financial statements are not acceptable. The financial statements must be for the specific business entity that is responding to the solicitation and throughout the duration of the term of contract.

The financial statements must be provided at the lowest level for which the financial statements are available and for the past three years. If vendor has been in business less than three years, the requirement is for all available years. For any financial statements submitted at a level above Level 1, vendor must include an explanation why the financial statements are not available at a lower level. The financial statements do not have to be at the same level for each period submitted, but an explanation of the need for the variation is required with the response.

Acceptable Levels of financial statements (submit at the lowest feasible level):

- 12.1. Level 1 – A complete set of audited financial statements based on US Generally Accepted Accounting Principles (US GAAP). The submission must include the notes to the financial statements as well as any other information covered by the auditor's opinion.
 - 12.2. Level 2 – A complete set of audited financial statements based on other than US GAAP but acceptable to the country of origin. The submission must include a letter from the certified public accountant discussing the areas of the financial statements that would be affected by a conversion to US GAAP, the notes to the financial statements as well as any other information covered by the auditor's opinion.
 - 12.3. Level 3 – A complete set of reviewed statements based on US GAAP reviewed by an independent CPA. The submission must include the notes to the financial statements as well as any other information covered by the auditor's report.
 - 12.4. Level 4 – A complete set of compiled statements compiled by an independent CPA (income statement and balance sheet at a minimum) as well as the note disclosures and any report issued by the auditor with regards to the statements. If the CPA is not independent, the report must state the accountant is not independent.
 - 12.5. Level 5 – Properly classified and presented balance sheets and income statements generated by the vendor's accounting system. The submission must state the basis on which the statements are created and must be certified as true and reliable by an officer of the vendor's business.
13. Multiple Awards

Multiple contracts may be awarded from this solicitation.

In accordance with TxDOT Terms and Conditions, Part II, TxDOT reserves the right to make award or awards to best serve the interest of the state.

Award will be made to the respondent(s) providing the best value for the state as directed by TxDOT Terms and Conditions, Paragraph 2.07.

14. Response Submission

- 14.1. GENERAL FORMAT: The respondent must submit one signed and dated response to include the documentation required per response paragraph 14.3 to the email address as indicated on the "Instructions to Respondents" page.

- 14.2. The respondent shall not encrypt or password protect response or embed documents within the response; each section must be its own separate document.
- 14.3. RESPONSE: Failure by the respondent to submit the documentation listed below will result in the response being considered non-responsive. The response submission must be submitted with each section named with the "Section #" and brief description not to exceed 30 total characters as a separate document in the following format:
- 14.3.1. Section 1 – Pricing Schedule
 - 14.3.2. Section 2 – Execution of Proposal
 - 14.3.3. Section 3 – Vendor Qualifications and Experience Schedule: Complete and return detailing respondent qualifications and experience to include certifications or licenses required.
 - 14.3.4. Section 4 – Vendor Personnel Qualifications, Experience and References Schedule: Complete and return for each proposed key or respondent personnel position to include certifications or licenses required.
 - 14.3.5. Section 5 – Texas Family Code Schedule
 - 14.3.6. Section 6 – Demonstration of Capability: The respondent's approach and ability to meet the service requirements as specified in the solicitation must be demonstrated. The response should be specific and address all requirements described in the solicitation in the order presented in Paragraph 8 of the SOW to include but not limited to the below key topics:
 - 14.3.6.1. Provide a list of advertising sources that have been used in the past for posting job positions or recruiting information on.
 - 14.3.6.2. Provide a list of at least five businesses that have hired a candidate submitted by the respondent.
- NOTE: Do not include businesses where temporary personnel have been provided.
- 14.3.6.3. Submit a sample recruitment plan.
 - 14.3.6.4. Submit a sample position advertising plan.
 - 14.3.6.5. Submit a sample timeline documenting the process to recruit and propose candidates to be considered.
 - 14.3.6.6. Staffing plan: Submit a proposed staffing plan to demonstrate staff qualification and experience, including subcontractors. This plan should describe the number of staff proposed for this project, the functions they will perform and the percentage of time they will be assigned to this project during the contract term. Identify subcontractors or individuals that are contracted with on an as needed basis to provide services.
 - 14.3.7. Section 7 – Assumptions Schedule: The respondent must provide a comprehensive listing of all assumptions made in preparing its response to this solicitation. All respondent assumptions must reference the solicitation section and/or paragraph number. The respondent must propose the services as requested within the solicitation and must not descope the services that are being requested. Any assumptions that result in significant changes to or descoping of the SOW may result in the response being considered nonresponsive. No price data may be included in the assumptions. If the respondent does not have assumptions to the solicitation, please note this on the Assumptions Schedule document.

- 14.3.8. Section 8 – Exceptions Schedule: If the respondent takes exceptions to any portion of the solicitation, these exceptions must be specifically and clearly identified by paragraph in the response and the respondent's proposed alternative must also be provided for consideration. If the respondent does not have exceptions to the solicitation, please market on the Exceptions Schedule. The respondent must not take a 'blanket exception' to the entire solicitation.
- 14.3.9. Section 9 – HUB Subcontracting Plan
- 14.3.10. Section 10 – Financial Standing
- 14.3.10.1. Submit the most recent three years audited financial statements, or if audited financial statements are unavailable, un-audited financial statements must be submitted and certified as true, correct and accurate by the chief financial officer or treasurer of the respondent's company (Reference Paragraph 13. RFP).
- 14.3.10.2. Additional information demonstrating financial stability and ability to meet the financial responsibilities for the requirements to perform this service.
- 14.3.11. Section 11 – Addenda: Acknowledgement of associated addenda, if applicable.

NOTE: TxDOT reserves the right to waive minor errors and omissions, reference paragraph 2.02(h) of TxDOT Terms and Conditions.

15. Evaluation

- 15.1. TxDOT will consider best value for the state (reference TxDOT Terms and Conditions, Paragraph 2.07).
- 15.2. TxDOT reserves the right to omit oral presentations, discussions, negotiations or not make an award.
- 15.3. Respondent is strongly encouraged to provide its best proposal in the response. TxDOT makes no guarantee there will be any opportunity to make oral presentations, attend discussions or to negotiate at any point during the evaluation process. TxDOT may seek additional information, negotiate, and solicit Best and Final Offers (BAFO) from respondents determined to be in the competitive range.
- 15.4. Evaluation of Responses: Only a complete response with the listed required submittal documents and meeting minimum qualifications will be considered. Failure to meet the minimum qualifications and submit the required documents will result in a response being declared non-responsive. TxDOT reserves the right to conduct studies and other investigations as necessary to evaluate any response.
- 15.5. Evaluation Criteria:
- Pass/Fail Criteria: In addition to the weighted criteria, TxDOT will review responses based on the Pass/Fail criteria as follows:
- 15.5.1. All Documents in response submission section above are included in the response.
- 15.5.2. Financial review – The determination of whether the respondent has the financial capability to carry out the responsibilities as described in this solicitation is in TxDOT's sole discretion.

15.5.3. Vendor performance rating through the CPA Vendor Performance Report: <http://www.txsmartbuy.com/vpts> - Reference Terms and Conditions paragraph 2.11.

15.5.4. HUB Subcontracting Plan

15.6. A TxDOT evaluation committee will evaluate and score each response based on the established criteria described in this solicitation. Respondents must not contact members of the evaluation team. Responses will be evaluated according to the respondent's ability to best satisfy TxDOT requirements. Submissions will be evaluated and scored on a weighted system to determine the response offering the best value.

15.6.1. Only responses that pass the criteria referenced in Pass/Fail will be reviewed and scored.

15.6.2. Written responses will be evaluated as indicated below:

Respondent qualifications and experience	15%
Respondent's approach to meeting the requirements detailed in the Statement of Work (SOW)	65%
Pricing	20%

15.7. TxDOT reserves the right to check references and include in scoring of the next evaluation phase.

15.8. Definitions Oral Presentation, Discussion, Revised Proposal, Negotiations:

15.8.1. Oral Presentation – A visual representation of the respondent's proposal which should highlight the strengths and unique aspects of the respondent's proposal and may include a site visit or a demonstration of the proposed solution and must provide answers to clarification questions from the evaluation team. The presentation must be drafted based on the agenda format provided and time allocated by TxDOT.

15.8.2. Discussion – A conversation between the respondent(s) and TxDOT to discuss the proposal. This meeting is to resolve outstanding or unanswered questions and for clarifications by both parties; will not include negotiations.

15.8.3. Revised Proposal – A revision to the original proposal based on clarifications and questions answered in the discussion phase.

15.8.4. Negotiations – This phase will include only those items that require finalizing. The negotiations may include, but not be limited to: Exceptions to the terms and conditions, pricing, or additional items within the scope of work based on the respondent's proposal.

15.9. Oral Presentations

15.9.1. TxDOT reserves the right to down select and invite the highest scoring respondents to participate in oral presentations.

15.9.2. If oral presentations are requested, TxDOT will advise each respondent in writing of the location, date, and time of the scheduled oral presentation. A minimum of 14 business days' notice will be given to the respondent(s)

selected for the oral presentation phase. Attendance at the oral presentation is mandatory. Failure to attend the oral presentation at the location, date, and time designated by TxDOT will disqualify the response submitted by the respondent.

- 15.9.3. TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
- 15.9.4. Oral presentations, if conducted, will be evaluated as indicated below and scores will replace the written response scores:

Respondent references and clarifications on qualifications and experiences	15%
Respondent's approach to meeting the requirements detailed in the Statement of Work (SOW)	65%
Pricing from respondent's original written proposal	20%

15.10. Discussions

- 15.10.1. TxDOT reserves the right to down select and invite the highest scoring respondents to participate in discussions and may request revised proposals.
- 15.10.2. If discussions are requested, TxDOT will advise each respondent in writing of the location, date, and time of the scheduled discussion. A minimum of 5 business days' notice will be given to the respondent(s) selected for the discussion phase. Attendance at the discussion meeting is mandatory. Failure to attend the discussion meeting at the location, date and time designated by TxDOT will disqualify the response submitted by the respondent.
- 15.10.3. TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
- 15.10.4. Respondent's assumptions and exceptions will be reviewed to ensure they do not de-scope or significantly change the solicitation, as advertised. Any questions regarding assumptions or exceptions will be sent to the respondent to discuss and address during the Discussions meeting. Any assumptions or exceptions requiring negotiations, refer to RFP paragraph xx.
- 15.10.5. When a revised proposal is requested, respondents must submit one clean and one red-lined version as instructed by TxDOT.
- 15.10.6. Discussions, if conducted, whether a revised proposal is requested or not, will be evaluated as indicated below and scores will replace the previous evaluation scores (i.e., written, or oral responses).

Respondent's revised approach to meeting the requirements detailed in the Statement of Work (SOW)	80%
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Respondent's revised pricing	20%
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16. Negotiations: TxDOT reserves the right to select and invite the highest scoring respondent(s) to participate in negotiations and may request a BAFO. TxDOT will conduct negotiations at a designated location and mutually agreed to date(s) and time for the meeting(s).
- 16.1. When a BAFO is requested, respondents must submit one clean and one red-lined version as instructed by TxDOT.
- NOTE: Any assumptions or exceptions taken by the down selected respondents (s) that require negotiations will also be addressed during these meetings(s).
17. Post Award Meeting: The successful respondent(s) may be required to attend a post award meeting with TxDOT within 10 business days after the award. If a post award meeting is scheduled, TxDOT will advise each respondent in writing of the location, date, and time. The purpose of the meeting is to discuss the terms and conditions of the award and to provide additional information regarding the contract. The awarded vendor and TxDOT shall identify specific goals, strategies, and activities planned for meeting program area objectives.
18. Debriefing Meeting: A respondent who responded to the solicitation may request a debriefing meeting within 30 calendar days of the award being posted to the ESBD. Respondent must request this meeting in writing from the purchaser listed on the solicitation.

TEXAS DEPARTMENT OF TRANSPORTATION

STATEMENT OF WORK
 TxDOT 961-30-40183
 DATED: MAY 2023

EMPLOYEE SEARCH AND RECRUITMENT SERVICES

PUBLICATION

This statement of work (SOW) is a product of the Texas Department of Transportation (TxDOT). This SOW may not be sold for profit or monetary gain. If this document is altered in any way, the header and any and all references to TxDOT must be removed. TxDOT does not assume nor accept any liability when this specification is used in the procurement process by any other entity.

1. SCOPE: This SOW is to provide employee search and recruitment services to assist the Texas Department of Transportation (TxDOT) in recruiting candidates meeting the qualifications and experience requirements for various positions, on an as needed basis. TxDOT will contact the vendor when services are needed and provide the details for the job vacancy, at that time.
2. LOCATION(S): Are specified on Attachment A – Locations. TxDOT reserves the right to add or delete facilities serviced under the contract. TxDOT will provide 14 calendar day(s) written notice to the vendor for locations to be deleted or of any additional locations requiring service within the same area or region.
3. DEFINITIONS OF TERMS AND ACRONYMS
 - 3.1. Contract – Any Purchase Order (PO) or Blanket Purchase Order (BPO) resulting from this solicitation as listed in the Order of Precedence in the resulting PO or BPO.
 - 3.2. PM – Project manager.
 - 3.3. POC – Point-of-contact.
 - 3.4. TxDOT – Texas Department of Transportation.
4. APPLICABLE LAWS AND STANDARDS: The vendor shall provide the specified service requirements in accordance with all federal, state, and local applicable laws, standards, and regulations necessary to perform the services.
5. CURRENT ENVIRONMENT: TxDOT operates as a customer focused and results driven, state agency with an annual budget of 12.4 billion dollars and more than 12,000 employees statewide. By stressing the importance and commitment to the transportation needs of the future, the Texas Transportation Commission has named one of its top priorities as retention and recruitment of "a diverse and well-prepared workforce." The TxDOT mission: "Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods."
6. VENDOR QUALIFICATIONS: The vendor must:
 Be a company or an individual engaged, or whose partners are engaged in the business of providing employee search and recruitment services, including but not limited to

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executive, management and hard to fill positions, for a minimum of three years within the last five years. Years of experience of an individual(s) or partner(s) with a minimum of 25% ownership of the company can be applied to the company's years in business.

7. VENDOR PERSONNEL QUALIFICATIONS AND REQUIREMENTS: The vendor must provide the following personnel with the listed qualifications:

7.1. PM must:

7.1.1. Be available from 8:00 a.m. to 5:00 p.m. CT, Monday through Friday.

7.1.2. Be a permanent staff employee and shall serve as a constant primary point of contact for TxDOT.

7.1.3. Maintain regular contact with the TxDOT Point of Contact.

7.2. Recruiter must:

7.2.1. Have a minimum of three years of experience within the last five years as an employee recruitment professional, to include experience in executive and management level positions.

8. SERVICE REQUIREMENTS: The vendor must:

8.1. Provide all labor, materials and equipment necessary to meet requirements of the specified service throughout the term of the purchase order.

8.2. Provide a primary point of contact.

8.3. Provide an updated list of all vendor personnel or subcontractors at each job site and comply with all security measures required by TxDOT.

8.4. Ensure all personnel are fluent in English with the ability to receive, give, and understand written and oral instructions.

8.5. Ensure personnel are not excessively loud.

8.6. Ensure personnel do not use personal multi-media devices while performing services for TxDOT unless furnished by the vendor to facilitate communication with TxDOT or the vendor.

8.7. Have a minimum staff of two recruiters with recruitment experience

8.8. Provide one recruiter or subcontractor that is fluent in Spanish and English with the ability to receive, give and understand written and oral instructions in both English and Spanish.

8.9. Provide respondent personnel to efficiently perform the requested employee search in a timely manner.

8.10. Provide respondent personnel with the training, experience and knowledge required to successfully perform the services of this solicitation.

8.11. Meet with the designated TxDOT representative to determine agency needs, including, but not limited to a discussion of the organization's current status, culture, organizational structure and management level positions. During the meeting, mutual expectations shall be defined.

8.12. Vendors should propose a best value solution for recruiting applicants, to include, but not be limited to executive, management, and hard to fill positions. Services

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may include recruitment activities and selection of several best qualified applicants, up to full recruitment services and final selection to submit to TxDOT. TxDOT may make the final determination on applicants submitted by the vendor and will perform background checks and drug screening on each applicant selected to be processed through the hiring process.

8.13. Develop the following, prior to beginning services for each position identified by TxDOT:

- 8.13.1. Position profile based on the TxDOT job requirements.
- 8.13.2. Recruitment plan, as approved by TxDOT.
- 8.13.3. Position advertising plan.
- 8.13.4. A timeline documenting the process to recruit and propose candidates to be considered within the TxDOT pool of applicants. The deadline will be provided to the vendor contingent on the position to be filled and the business needs date.
- 8.13.5. Maintain regular contact with the designated TxDOT representative, until services have been successfully completed.
- 8.13.6. Provide assistance in developing a needs-specific search to successfully attract the most qualified candidates, in accordance with the job vacancy posted on TxDOT's internet website.
- 8.13.7. Obtain written approval of all advertisements for positions identified by TxDOT, prior to placing an advertisement. All advertisements placed by the vendor shall be paid for by the vendor and shall include the following statement: "Texas Department of Transportation is an Affirmative Action and Equal Opportunity Employer."
- 8.13.8. Interview and develop a list of qualified candidates to submit to the designated TxDOT representative. The list of qualified candidates should include a summary of each candidate's background and qualifications, professional achievements, compensation history and an evaluation of each candidate.
- 8.13.9. Provide written progress reports to the designated TxDOT representative, as requested.

8.14. Begin work within 10 business days after the issuance of the contract.

9. VENDOR PERFORMANCE: Vendor performance will be monitored on a regular basis by TxDOT.

- 9.1. An unsatisfactory performance determination includes, but is not limited to:
 - 9.1.1. One instance of the Recruiter not maintaining regular contact with the designated TxDOT representative (Ref. Para. 7.1.3.).
 - 9.1.2. Two instances of written progress reports not being submitted within the time frame requested by the designated TxDOT representative (Ref. Para. 8.14.9).
 - 9.1.3. Any requirement not met as outlined in the service requirements determined by TxDOT.

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NOTE: Unsatisfactory performance may result in a negative vendor performance report, or cancellation of the contract or both, in addition to any other rights, liquidated damages and remedies provided by the contract or allowed by law.

9.2. An exceptional performance determination includes, but is not limited to vendor commended for exceptional customer service, exceptional service provided.

10. PERSONNEL CONTINUITY AND REPLACEMENT

10.1. The PM and recruiters must remain available for the entire term of the contract as long as that individual is employed by the vendor.

10.2. TxDOT recognizes that events beyond the control of the vendor such as the death, physical or mental incapacity, long-term illness, or the voluntary termination of employment of the PM or recruiters will require the vendor propose a replacement. Vendor must notify TxDOT within 24 hours after the vendor is made aware of such a situation.

10.3. Proposed replacement personnel must:

10.3.1. Be submitted to TxDOT within 15 calendar day(s) of notification resulting from paragraph 10.1 or 10.2 above.

10.3.2. Meet minimum qualifications and have experience comparable to the person(s) being replaced. Resume(s) and reference(s) may be requested for the proposed replacement(s).

10.3.3. Be provided at no additional cost to TxDOT.

10.3.4. Not begin work on the project without prior written approval from TxDOT.

NOTE: TxDOT may reject any replacement if references or past working performance is questionable or unfavorable. TxDOT will be the sole judge of the qualifications of the proposed replacement personnel.

11. TRAVEL: All travel and per diem must be pre-approved in writing by the designated TxDOT representative. If approved, expenses will be reimbursed as follows:

11.1. TxDOT will coordinate reimbursement of travel expenses directly with non-local applicants selected for an interview (Ref. Para. 14.5).

11.2. Travel and per diem for the vendor shall be pre-approved in writing by the designated TxDOT representative and will be limited to attendance to meetings and other activities, at the request of TxDOT. All other travel for vendor should be included in the bid price on pricing schedule. If approved, expenses will be reimbursed as follows:

11.3. Reimbursement for travel expenses include: Personal vehicle mileage, commercial transportation, lodging, parking, and meals. Reimbursement shall be based on the "Employee" section of the website below:

<https://fmxcpa.texas.gov/fmx/travel/texttravel/rates/current.php>

11.4. Meals for non-overnight travel may be reimbursed if the travel period is greater than six hours and the travel is to a location outside the district in which the vendor's primary work location is located.

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NOTE: The Internal Revenue Service has ruled that the meal reimbursements related to non-overnight travel are taxable as additional income. Taxes must be withheld at a rate of 25% of the reimbursement amount. The vendor shall be responsible for withholding this tax.

- 11.5. Rental cars are permitted when the cost is equal to or less than the cost of calculated mileage.

NOTE: When a rental car is approved, personal mileage is not reimbursed without prior approval from the designated TxDOT representative.

- 11.6. Air travel is allowed only if the travel charges that include air, parking, mileage, fuel, and rental car are equal to or less than the rate of the standard travel charges. Air travel must be approved by the designated TxDOT representative prior to travel.

- 11.7. Travel expenses on the calendar before a meeting or work that begins at 1:00 p.m. or on the calendar after a meeting or work that ends at 12:00 noon will not be reimbursed unless prior approval from the designated TxDOT representative has been granted. Approval will be based upon whether the following circumstances would warrant additional travel expenses:

11.7.1. More than 200 miles one way from the vendor's home base to the meeting or work location.

11.7.2. More than four hours of driving time one way from the vendor's home base to the meeting or work location.

11.7.3. Inclement weather.

11.7.4. Mileage for the vendor's employees to drive back and forth to the meeting or job site is 50 miles or more from the vendor's home base.

- 11.8. Travel expenses must be clearly detailed and receipts emailed to the designated TxDOT representative.

NOTE: TxDOT will not reimburse tips, gratuities, or alcoholic beverage purchases.

12. CONFLICT OF INTEREST: The vendor, vendor's personnel, and vendor's subcontractor(s) affirm not to have acquired and agree not to acquire any interest during the term of the contract that would conflict in any manner with the performance of the vendor's obligations in regards to services authorized.

13. ADDITIONAL INVOICING INSTRUCTIONS: The vendor must:

- 13.1. Invoice in accordance with Paragraph 4.03 of the Terms and Conditions attached. and include the additional information listed below:

13.1.1. Location of service.

13.1.2. TxDOT's job opening number.

13.1.3. An expenditures report or detailed billing report that provides a description of the work performed.

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13.1.4. Labor hours and rates detailed on each vendor invoice.

NOTE: Partial hours will be paid by rounding to the nearest half-hour as shown below:

Less than 15 minutes – round to zero hours.

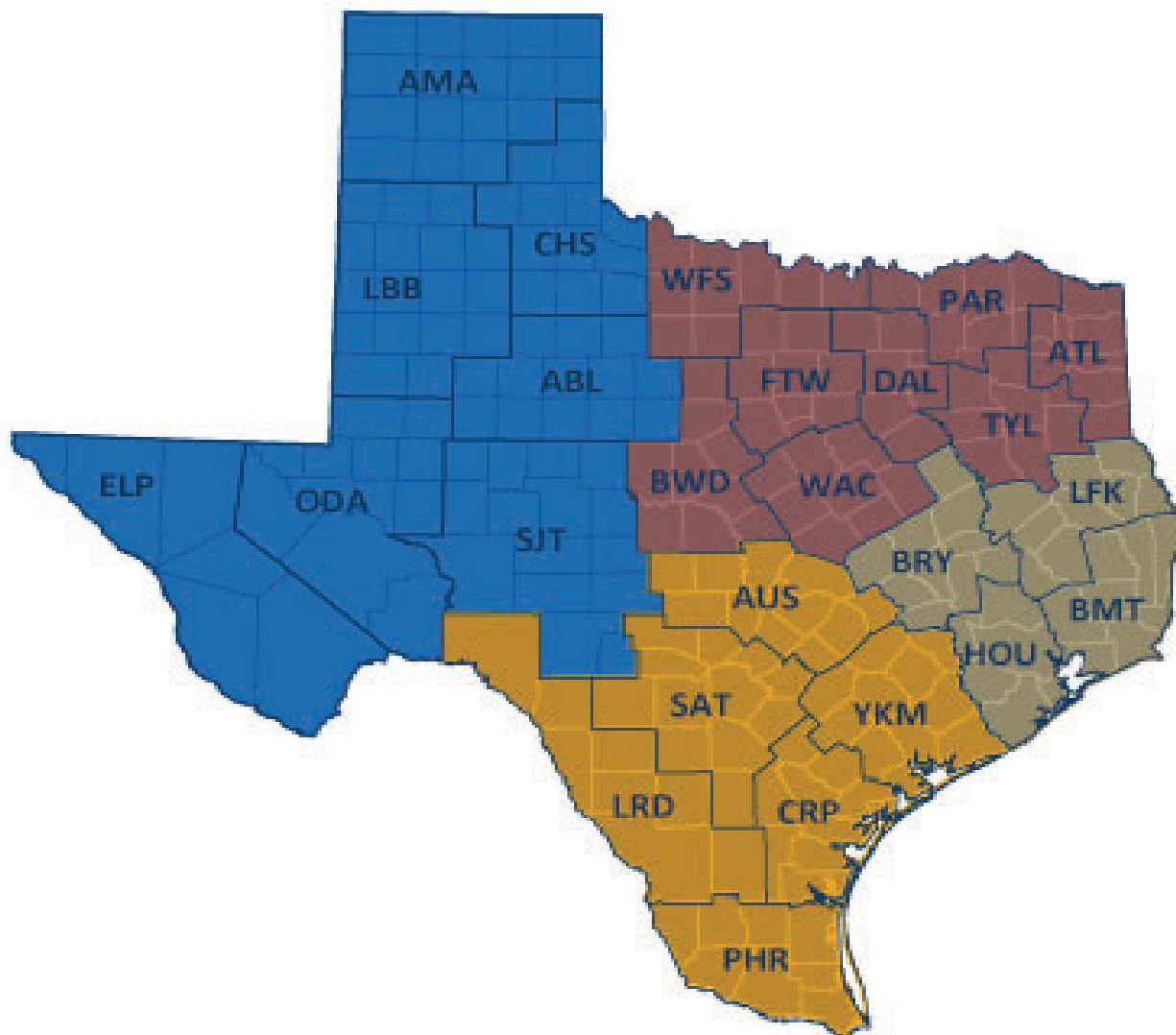
Fifteen (15) minutes to 45 minutes (inclusive) – round to 1/2 hour.

Greater than 45 minutes – round to 1 hour.

14. TxDOT RESPONSIBILITIES: TxDOT will:
- 14.1. Provide a contract manager as the point of contact.
 - 14.2. Post the job vacancy posting on the TxDOT internet website.
 - 14.3. Keep an open line of communication with the vendor to answer questions and concerns.
 - 14.4. Schedule interviews with applicants selected by TxDOT for an interview.
 - 14.5. Coordination and reimbursement of a non-local applicants travel directly with applicant.
 - 14.6. Notification of applicants not selected for an interview of their non-selection.
15. CONTRACT ADMINISTRATION: Administration of the contract is a joint responsibility of the TxDOT contract administrator and TxDOT purchasing staff. Purchasing staff will be responsible for administering the contractual business relationship with the vendor.
- 15.1. Any proposed changes to work to be performed, whether initiated by TxDOT or the vendor, must receive final written approval in the form of a Purchase Order Change Notice signed by the authorized TxDOT purchasing agent.
 - 15.2. Upon issuance of contract, TxDOT will designate an individual to serve as the contract manager and point of contact between the agency and the vendor. The contract manager does not have any express or implied authority to vary the terms of the contract, amend the contract in any way, or waive strict performance of the terms or conditions of the contract. This individual's contract management and contract administration responsibilities include, but are not limited to:
 - 15.2.1. Monitoring the vendor's progress and performance and ensuring services conform to established specification requirements.
 - 15.2.2. Managing the financial aspects of the contract including approval of payments.
 - 15.2.3. Meeting with the vendor as needed to review progress, discuss problems, and consider necessary action.
 - 15.2.4. Identifying a breach of contract by assessing the difference between contract performance and non-performance.
 - 15.2.5. Other areas as identified by the State of Texas Procurement and Contract Management Guide version 2.1.

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ATTACHMENT A
LOCATIONS
SOLICITATION 601440000040183



VENDOR QUALIFICATIONS AND EXPERIENCE SCHEDULE
SOLICITATION NO. 601440000040183

Vendor must use this schedule or a reasonable facsimile to clearly demonstrate how they meet the qualifications and requirements set forth in the SOW.

Vendor Name:
<u>Addresses</u> Physical: Mailing:
Phone Number: E-mail address:
Legal Status: Type of Organization, i.e., corporation, partnership, sole proprietorship
Number of years in business and scope of operation.
DOCUMENTATION OF COMPANY QUALIFICATIONS AND EXPERIENCE: Provide your company's experience and capabilities outlined in the SOW:

This form may be modified as needed to comply with the requirement to document company information.

**THIS PAGE OR A REASONABLE FACSIMILE MUST BE RETURNED WITH THE RESPONSE.
FAILURE TO RETURN THIS PAGE OR A REASONABLE FACSIMILE WILL RESULT IN THE
RESPONSE BEING CONSIDERED NON-RESPONSIVE. ANY NEGATIVE RESPONSE(S) MAY
RESULT IN DISQUALIFICATION OF THE RESPONSE.**

VENDOR PERSONNEL QUALIFICATIONS, EXPERIENCE AND REFERENCES SCHEDULE
SOLICITATION NO. 601440000040183

Vendor Name: _____

The vendor must complete a schedule not to exceed 2 pages for each employee as listed in SOW. TxDOT reserves the right to reject the vendor's personnel if references or past working performance are questionable or unfavorable.

PERSONNEL INFORMATION		RESPONSE AREA	
Full Name:			
Number of years employed by respondent:			
Title as defined in Paragraph. 1 (SOW).			
PERSONNEL QUALIFICATIONS AND REQUIREMENTS		# YRS EXP.	HOW/WHERE OBTAINED
Number of years' experience in (employee recruitment services):			
Specific education, qualifications, training, certifications:			

PERSONNEL EXPERIENCE – Provide your qualifications and experience as outlined in SOW:

VENDOR PERSONNEL QUALIFICATIONS, EXPERIENCE AND REFERENCES SCHEDULE
SOLICITATION NO. 601440000040183

Reference No.

Name of Organization:			
Business Address:			
Business City:			
Business State:		Zip:	

Contact Person Name:			
Contact Person Title:			
Phone Number:		E-Mail:	

Project Title:			
Project Description and dollar amount:			
Roles and Responsibilities of the Proposed Staff during this project:			
Project Start Date:		Project End Date:	

Reference No.

Name of Organization			
Business Address			
Business City			
Business State		Zip	

Contact Person Name:			
Contact Person Title:			
Phone Number		Email:	

Project Title			
Project Description and dollar amount			
Roles and Responsibilities of the Proposed Staff during this project			
Project Start Date		Project End Date	

THIS PAGE OR A REASONABLE FACSIMILE MUST BE RETURNED WITH THE RESPONSE. FAILURE TO RETURN THIS PAGE OR A REASONABLE FACSIMILE WILL RESULT IN THE RESPONSE BEING CONSIDERED NON-RESPONSIVE. ANY NEGATIVE RESPONSE(S) MAY RESULT IN DISQUALIFICATION OF THE RESPONSE.

Revised: November 2021

TEXAS FAMILY CODE SCHEDULE
SOLICITATION NO. 601440000040183

Ineligibility to Receive State Grants or Loans or Receive Payment on State Contracts

Respondent shall fill out the appropriate information, sign and return the schedule.

Under Family Code §231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate. Any response submitted under this solicitation shall contain the names and social security numbers of person or entity holding at least a twenty-five percent ownership interest in the business entity submitting the response. Respondents meeting the ownership must complete the following:

	XXX-XX-
Name	Social Security Number
	XXX-XX-
Name	Social Security Number
	XXX-XX
Name	Social Security Number

If respondent does not meet the ownership criteria under Texas Family code - Section 231.006, check the box below, sign and return the schedule.

☐ This Schedule is not applicable

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

Signature

Title

**THIS PAGE OR A REASONABLE FACSIMILE MUST BE RETURNED WITH THE RESPONSE.
 FAILURE TO RETURN THIS PAGE OR A REASONABLE FACSIMILE WILL RESULT IN THE
 RESPONSE BEING CONSIDERED NON-RESPONSIVE.**

TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS

PART 1. INTRODUCTION

1.01 GENERAL: These Terms and Conditions apply to the solicitation for goods and/or services [whether a Request for Quote (RFQ), Invitation for Bid (IFB), Request for Offer (RFO) or Request for Proposal (RFP)] offered by the Texas Department of Transportation (TxDOT) ("solicitation") and any contract issued by TxDOT resulting from the solicitation ("purchase order" or "contract"). The term "response" or "bid" means the proposal, quote, bid, or offer made to TxDOT in response to the solicitation. The term "respondent" or "bidder" means the party who submits the response to the solicitation, including the vendor. The term "vendor" or "contractor" means the party listed as vendor in the contract. Any reference to time in the solicitation or contract shall mean central time.

1.02 STATUTORY AUTHORITY: The solicitation and contract are authorized by Government Code Title 10, Subtitle D (the "Purchasing Act"). The solicitation and contract are subject to all applicable requirements of the Purchasing Act [in particular, Government Code Chapter 2151 (General Provisions), Chapter 2155 (Purchasing: General Rules and Procedures), Chapter 2157 (Purchasing: Purchase of Automated Information Systems), and Chapter 2161 (Historically Underutilized Businesses, "HUBs")] and those requirements established by rule of the Texas Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD), as contained in Title 34, Chapter 20, of the Texas Administrative Code ("TAC"), and to other applicable federal and state statutes and rules herein cited. Any references in this contract to the "Government Code" mean the Texas Government Code.

1.03 TITLE VI ASSURANCE: TxDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and 49 C.F.R. Part 21 and 28 CFR §50.3 (for purposes of this section and §6.10 only, the "Acts" and the "Regulations," respectively), hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Nondiscrimination programs require that federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all their programs and activities, whether those programs and activities are federally-funded or not.

1.04 ENVIRONMENTAL IMPACT: It is TxDOT's intent to purchase goods, equipment, and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability, and sound economic considerations in accordance with 34 TAC §20.306 and 20.307.

1.05 COMPLIANCE WITH LAWS: Vendor must comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting contract performance, including, if applicable, laws and regulations regarding workers' compensation, minimum and maximum salaries and wages, prompt payment, and licensing. Vendor must maintain all licenses and certifications required by law or by the contract throughout the term of the contract. When required, vendor must furnish TxDOT with satisfactory proof of its compliance.

PART 2. GENERAL INSTRUCTIONS

2.01 SPECIFICATIONS

- (a) Respondent must carefully examine the solicitation. Respondent is responsible for securing any additional information from the TxDOT purchaser needed to gain a clear and full understanding of TxDOT's requirements.

Revised June 2022

- (b) TxDOT will not be bound by any oral statement or representation contrary to the written specifications of the solicitation. Any revision, clarification, or interpretation pertaining to the solicitation will be in writing and issued by TxDOT as an addendum. Any change or interpretation not in an addendum will not legally bind TxDOT. Any addendum must be issued through TxDOT's Procurement Division.
- (c) The goods furnished or services performed shall be in accordance with the specifications set forth in the solicitation and with these Terms and Conditions. TxDOT will provide clarification of the specifications and determine the quality and acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will determine the manner of performance, the rate of progress of the work, and whether vendor's performance of the service is acceptable.
- (d) Any catalog, brand name, or manufacturer's reference used in the solicitation is descriptive only (not restrictive) and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Government Code §2155.067. Respondent must show manufacturer, brand or trade name, and other description of the product offered in response to the solicitation. If offer is for other than example(s) shown in the solicitation, include illustration(s) and complete description(s) of product(s) in the response to the solicitation. If respondent takes no exception to specifications or reference data in the response, vendor will be required to furnish brand names, numbers, etc., as specified.
- (e) Unless otherwise specified, all goods offered must be new and in first-class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
- (f) Manufacturer's standard warranty must apply unless otherwise stated in this solicitation.
- (g) All electrical items must meet all applicable OSHA standards and regulations and bear the appropriate listing from UL, FMRC, or NEMA.
- (h) Any iron or steel product produced through a manufacturing process and used in the project must be produced in the United States, to the extent required by Government Code Chapter 2252, Subchapter F. That Subchapter generally applies to contracts to (A) construct, remodel, or alter a building, a structure, or infrastructure; (B) supply a material for a project described by subsection (A); or (C) finance, refinance, or provide money from funds administered by a governmental entity for a project described by subsection (A).

2.02 RESPONSE SUBMISSIONS

- (a) Response must be submitted as noted in the solicitation.
- (b) Response must be time stamped in TxDOT's mail room or hand-delivered to the address on the solicitation before the hour and date specified for the solicitation opening. Late responses will not be considered under any circumstances and will be returned unopened to respondent.
- (c) Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- (d) Failure to sign the solicitation will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response must include an Employer Identification Number (EIN) and full firm name and address. The EIN should be entered in the space provided on the solicitation.
- (e) Facsimile (Fax) responses will not be considered unless otherwise stated in the solicitation. Fax responses must be received before the hour and date specified for the solicitation opening. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.

- (f) Email responses may be accepted if stated on the solicitation. Email responses must be received before the hour and date specified for the solicitation opening and be in Portable Document Format (PDF) (except for pricing schedules, which must be submitted in Excel format using the pricing spreadsheet developed by the department). All attached documents together must not exceed a total of 20 MB, must be signed by respondent, and be attached to the email to be considered for award. TxDOT will not be responsible for failure of electronic equipment, operator error, or system delays or outages. Responses that are late, illegible, incomplete, file-corrupted, flagged as a virus, or otherwise non-responsive will not be considered.
- (g) **RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES:** Exceptions taken by respondent to TxDOT's Terms and Conditions, or respondent's Terms and Conditions attached to a response, will not be considered unless specifically referred to and clearly identified as such within the response, including, without limitations, exceptions related to software maintenance and usage or equipment maintenance services. TxDOT may reject a response that takes exception to TxDOT's Terms and Conditions.
- (h) TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities, and make an award to best serve the interests of the state. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- (i) Response should indicate number of days required to deliver goods, or begin service (if required), at TxDOT's designated location. Failure to indicate delivery time obligates vendor to complete delivery in fourteen (14) calendar days.
- (j) Samples, when requested, must be furnished at no cost to TxDOT. TxDOT may perform tests on samples. If not destroyed in testing, samples will be returned upon request at respondent's expense. Each sample must be marked with respondent's name and address and TxDOT solicitation number. Samples must not be enclosed or attached to a response unless specified in the solicitation.
- (k) The response, including price, is irrevocable for 120 calendar days following the hour and date specified for the solicitation opening. TxDOT may extend this period with respondent's written agreement.

2.03 PRICING

- (a) TxDOT's automated purchasing system requires pricing to be submitted per unit and extended by multiplying the submitted price by the quantity. Unit prices govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted, and net line extensions should be shown.
- (b) All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.
- (c) Vendor must not increase price(s) during the term of the contract unless otherwise stated in the contract. Vendor must give price reductions to TxDOT that result from reduced cost to vendor during the term of the contract.
- (d) All prices must be F.O.B. destination, freight prepaid and allowed. This means vendor must prepay the freight charges and include them in the unit price.
- (e) Purchases made for state use are exempt from state and local sales tax and federal excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales Tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.
- (f) The contract may contain a "Total Cost Not to Exceed" statement. Vendor must not perform any work that may exceed either the contract total or the not-to-exceed total without prior written authorization from TxDOT.
- (g) Consistent and continued tie response pricing may lead to rejection of the responses by TxDOT and investigation for antitrust violations.

2.04 ADA CONSIDERATIONS AND NOTIFICATION: Persons with special needs or disabilities who plan to attend any pre-response conference or bid opening and who require auxiliary aids or service should contact the purchaser noted on the solicitation as the point-of-contact a minimum of three (3) business days prior to the meeting so arrangements can be made.

2.05 RESPONSE OPENINGS AND DISCLOSURE OF INFORMATION

- (a) At the time of opening for RFOs or RFPs, only the names of respondents will be announced. Prices will not be disclosed.
- (b) At the time of opening for RFQs and IFBs, names of respondents will be announced, and pricing disclosed.
- (c) Information submitted in an accepted response will not be returned to respondent. Government Code Chapter 552 (the "Public Information Act") allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, respondent must clearly identify in the response any confidential or proprietary information. Proprietary information identified by respondent in the response will be kept confidential by TxDOT to the extent permitted by state law. TxDOT will use best efforts to give respondent or vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

2.06 ALTERATIONS OR WITHDRAWAL OF RESPONSES

- (a) Any alterations to a response made before the opening date and time must be initialed by respondent or authorized agent. Response cannot be altered or amended after the opening date and time.
- (b) A response may be withdrawn if requested in writing prior to the opening or closing date and time. A response may be withdrawn from consideration after the opening date only with the approval of TxDOT based on respondent's written, acceptable reason. The response will not be considered for award but will be retained by TxDOT according to the response information confidentiality provision referenced in §2.05 (c).

2.07 DETERMINING AWARD: A response to a solicitation is an offer to contract with TxDOT based upon the terms, conditions, and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TxDOT designee by issuance of a contract. In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations, unless otherwise stated in the solicitation.

- (a) **BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES:** When specified in the solicitation, the factors listed in Government Code §2155.074 will be considered in making a best value award. This section allows TxDOT to apply best value criteria to obtain goods and services that provide the best value for TxDOT. Under these guidelines, a respondent is not automatically awarded a contract if they submit the lowest bid response. TxDOT will be the sole judge as to which response is the most advantageous and in the best interest of TxDOT.

Factors, other than price, that may be considered in making an award:

- (1) Installation costs.
- (2) Life cycle costs.
- (3) Quality and reliability of goods and services.
- (4) Delivery terms.
- (5) Indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support.
- (6) Cost of any employee training associated with a purchase.

- (7) The effect of a purchase on agency productivity.
- (8) The impact of a purchase on the agency's administrative resources.
- (9) Other factors relevant to determining best value for the state set forth in the solicitation.
- (b) **ADDITIONAL BEST VALUE CRITERIA FOR RFO PURCHASES:** As provided in Government Code §2157.003, additional best value criteria will be used on all information technology equipment or service purchases including but not limited to:
 - (1) Purchase price.
 - (2) Compatibility to facilitate exchange of existing data.
 - (3) Capacity for expansion and upgrading to more advanced levels of technology.
 - (4) Quantitative reliability factors.
 - (5) Level of training required to bring end-users to a stated level of proficiency.
 - (6) Technical support requirements for maintenance of data across a network platform and management of the network's hardware and software.
 - (7) Items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product or service but are not specifically required within the solicitation.
- (c) **NEGOTIATIONS FOR RFO AND RFP PURCHASES:** TxDOT reserves the right to conduct formal negotiations with respondent(s) judged to have the best offer pertaining to price, goods, services, and terms.
- (d) TxDOT reserves the right to reject a response from a respondent whose goods or services to TxDOT or other state agencies have been documented as unsatisfactory in providing the same goods or services.
- (e) **TIE RESPONSES:** In case of tie responses, one or more preferences described in Government Code Chapter 2155 and 34 TAC §20.306 will be used to make an award. Tie responses which cannot be resolved by application of one or more preferences will be made by drawing lots.

2.08 PREFERENCES: A respondent may claim a preference under 34 TAC §20.306. To claim a preference, a respondent must identify the preference on the solicitation or on the response to the solicitation. If the appropriate area on the solicitation or response is not marked, a preference will not be granted unless other documents included in the response show a right to the preference.

2.09 DELIVERY: No substitutions or cancellations will be permitted without written approval from TxDOT. Approval must be issued in the form of a purchase order change notice issued by TxDOT's Procurement Division.

- (a) If delay is foreseen, vendor must promptly give written notice to TxDOT. TxDOT has the right to extend delivery or service date if reasons appear valid. Vendor must keep TxDOT advised at all times of the status of the order. Default in promised delivery or service date (unless vendor has received a written extension of the delivery or service date which has been signed by TxDOT) or failure to meet specifications authorizes TxDOT to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor.
- (b) Delivery must be made between the days and hours stated in the solicitation.
- (c) Receipt of goods or services does not constitute acceptance.
- (d) Goods and materials must be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to vendor at no cost to TxDOT. TxDOT reserves the right to inspect goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

2.10 INSPECTIONS AND TESTS: TxDOT may test and inspect goods and services purchased under the contract to ensure compliance with the specifications of the contract. TxDOT may also test and inspect goods and services before they are purchased under the contract. Goods and services will be subject to inspection and testing by TxDOT to the extent practicable at all times and places, including, without limitation, vendor's place of business. To the extent practical, the inspections will not disrupt vendor's daily operations. Tests will be performed on samples taken from regular shipments. In the event samples tested fail to meet all conditions and requirements of the specification, TxDOT may, at its option, reject the goods in whole or in part. The cost of the sample used and the cost of the testing shall be borne by vendor. Goods which have been delivered and rejected in whole or in part may, at TxDOT's option, be returned to vendor or held for disposition at vendor's risk and expense. Latent defects may result in cancellation of the contract at no expense to TxDOT. Acceptance of services will be based on attainment of performance in accordance with specifications and the contract.

2.11 VENDOR PERFORMANCE: TxDOT may review vendor's performance under a contract of \$25,000 or more resulting from the solicitation as described in Government Code §2155.089. These reviews and any resulting classification grade will be posted on the Vendor Performance Tracking System as noted in §2262.055 of the Texas Government Code.

Past Performance: A respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Government Code §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:

- (a) A letter grade score below 'C' in the Vendor Performance System or a score of "legacy unsatisfactory" for historic reports submitted prior to the implementation of the current rating system.
- (b) Being currently under a Corrective Action Plan through the CPA.
- (c) Having repeated negative Vendor Performance Reports for the same reason.
- (d) Having purchase orders that have been cancelled or terminated in the previous twelve (12) months for non-performance (i.e., late delivery, etc.).

Vendor performance information is located on the CPA website at <http://www.txsmartbuy.com/vpts>.

TxDOT may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 TAC §20.115) TxDOT may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations will be at the sole discretion of TxDOT and any negative findings, as determined by TxDOT, may result in non-award to respondent.

PART 3. RESPONDENT AFFIRMATIONS

3.01 FALSE STATEMENTS: Respondent represents and warrants that all statements and information in its submitted response are current, complete, true, and accurate. Submitting a response with a false statement or making material misrepresentations during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract and may result in removal of respondent from the Centralized Master Bidders List.

Revised June 2022

3.02 REPRESENTATIONS, WARRANTIES, AND COVENANTS: Respondent represents, warrants, and covenants that:

- (a) Personnel must be competent, knowledgeable, and experienced in the types of services to be provided under the contract and perform such services in a professional and workmanlike manner consistent with industry standards. Services must meet all specifications set forth in the contract provided, however, that where the contract specifies a particular standard or criteria for performance more particular than the foregoing, this warranty is not intended to and does not diminish that standard or criteria for performance. Further, in any case where detailed requirements for a service are not mutually agreed upon or set forth in the contract, such services shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, such contract; and
- (b) All goods and services furnished in connection with the contract must be of good and merchantable quality, strictly conform in all respects to the terms of the contract including any drawings, specifications, or standards incorporated herein, and be free from any defects (latent or otherwise) in materials, workmanship, and design. In addition, respondent warrants that goods and services are suitable and sufficient for, and will perform in accordance with, the purposes for which they are intended.

3.03 GRATUITIES: Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with respondent's submitted response.

3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED: Under Government Code §2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or solicitation on which the bid or contract is based. Under Government Code §2155.004, respondent certifies that the individual or business entity named in the response or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.05 ANTITRUST LAWS: Respondent represents and warrants that, in accordance with Government Code §2155.005, neither respondent nor the firm, corporation, partnership, or institution represented by respondent, or anyone acting for such firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15, of the Texas Business and Commerce Code or the federal antitrust laws, or (2) communicated the contents of the response directly or indirectly to any competitor or any other person engaged in the same line of business as respondent.

3.06 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES: Respondent represents and warrants that it has not been the subject of allegations of deceptive trade practices violations under Business & Commerce Code Chapter 17 or the subject of allegations of any unfair business practice in any administrative hearing or court suit, and that respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practices violations or the subject of allegations of any unfair business practices in an administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings.

3.07 COLLUSION: Respondent has not colluded with, nor received any assistance from, any person who was paid by TxDOT to prepare specifications or a solicitation on which a respondent's bid is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded.

3.08 INELIGIBILITY UNDER FAMILY CODE: Under Family Code §231.006, respondent certifies that respondent and any other individual or business entity named in the response are eligible to receive the specified payment and acknowledges that the contract may be terminated, and payment may be withheld if this certification is inaccurate. Any respondent subject to Family Code §231.006 must complete the Texas Family Code Schedule and return it with the response.

3.09 CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR: Under Government Code §669.003, respondent certifies that:

(a) All the following are true:

- (1) Respondent is not the executive director of TxDOT.
- (2) Respondent was not the executive director of TxDOT at any time during the past four years.
- (3) Respondent does not employ a current or former executive director of TxDOT.

OR

(b) Respondent has disclosed its employment of any former executive director of TxDOT as an attachment to its response, including the name of the former executive director, the date of separation from TxDOT, and the date of employment with respondent.

3.10 DEBT TO THE STATE: Respondent agrees that any payments due under the contract will be applied toward any debt or delinquency that is owed to the state of Texas.

3.11 RESPONDENT ELIGIBILITY

- (a) Respondent certifies that respondent and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
- (b) Respondent certifies that respondent is in compliance with the state of Texas statutes and rules relating to procurement.
- (c) Respondent certifies that respondent is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.
- (d) Under Government Code §[2155.006](#), respondent certifies that the individual or business entity named in the response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- (e) Respondent certifies that respondent is not an abortion provider or an affiliate of an abortion provider under Government Code §2272.003.
- (f) Respondent certifies that it is not:
 - (1) A person required to register as a lobbyist under Government Code Chapter 305.
 - (2) A public-relations firm.
 - (3) A government consultant.

3.12 NEPOTISM DISCLOSURE

(a) In this section, the term "relative" means:

- (1) A person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild.
- (2) The grandparent, parent, sibling, child, or grandchild of the person's spouse.

- (b) A notification required by this section must be submitted in writing to the person designated to receive official notices under the contract and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The notice must specify vendor's firm name, the name of the person who submitted the notification, the purchase order number, the district, division, office or regional service center of TxDOT that is principally responsible for the contract, the name of the relevant vendor employee, the expected role of the vendor employee on the project, the name of the TxDOT employee who is a relative of the vendor employee, the title of the TxDOT employee, and the work location of the TxDOT employee.
- (c) By signing the solicitation, respondent is certifying that respondent does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to work under the contract has a relative who is employed by TxDOT unless respondent has notified TxDOT of each instance as required by subsection (b).
- (d) If vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under the contract have a relative who is employed by TxDOT, vendor must notify TxDOT under subsection (b) of each instance within thirty (30) calendar days of obtaining that knowledge.
- (e) If vendor violates this section, TxDOT may terminate the contract immediately for cause, impose any sanction permitted by law, and pursue any other remedy permitted by law.

3.13 BOYCOTTING ISRAEL: Pursuant to Government Code §2271.002, respondent certifies that either (i) respondent meets exemption criteria under §2271.002, or (ii) respondent does not boycott Israel and will not boycott Israel during the term of the contract. Respondent must state any facts that make it exempt from the boycott certification in its response.

3.14 DISCLOSURE OF RESTRICTED EMPLOYMENT: Respondent acknowledges that under Government Code §572.069, a former state officer or employee of a state agency who, during the period of state service or employment, participated in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed, or the procurement is terminated or withdrawn.

3.15 ANTI-TERRORISM OR TERRORIST ORGANIZATION PROHIBITED: Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Government Code §2252.152.

3.16 CONTRACTING INFORMATION RESPONSIBILITIES: Respondent represents and warrants that it will comply with the requirements of Government Code §552.372(a). Except as provided by Government Code §552.374(c), the requirements of Subchapter J, Chapter 552 of the Government Code may apply to the contract, and respondent agrees that the contract can be terminated if respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

3.17 HUMAN TRAFFICKING PROHIBITION: Under Government Code §2155.0061, respondent certifies that the individual or business entity named in the response or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.18 NO CONFLICTS OF INTEREST: Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

3.19 COVID VACCINE PASSPORTS: Respondent certifies that it is in compliance with Texas Health and Safety Code §161.0085(c), which prohibits a business from requiring a customer to provide documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business.

3.20 FIREARM AND AMMUNITION DISCRIMINATION: Pursuant to Government Code §2274.002, to the extent applicable to respondent and this contract, respondent certifies that respondent:

- (a) Does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association.
- (b) Will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Respondent acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

3.21 LONE STAR INFRASTRUCTURE PROTECTION ACT: Pursuant to Government Code §2274.0102, respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code §2274.0103, or (2) headquartered in any of those countries.

3.22 BOYCOTTING ENERGY COMPANIES: To the extent applicable to respondent and this contract, respondent certifies that respondent does not boycott energy companies and will not boycott energy companies during the term of the contract in accordance with Government Code §2274.002.

PART 4. GENERAL TERMS AND CONDITIONS

4.01 CONTRACTS

- (a) Only authorized TxDOT purchasers have the authority to issue contracts for goods and services. Contracts must be issued by a TxDOT purchaser prior to vendor providing the goods or services. The only exceptions are payment card orders and bona fide emergencies. In the case of an emergency, the TxDOT Procurement Division will confirm such orders with a signed contract.
- (b) Vendor acceptance of a purchase order and delivery of goods or services without an approved purchase order number or release number issued by TxDOT may result in the rejection of delivery, return of goods at vendor's cost, and non-payment.

4.02 FUNDING: Any contract resulting from the solicitation is subject to termination or cancellation, without penalty to TxDOT, either in whole or in part, subject to the availability of state funds. In the event of a termination under this section, TxDOT will not be liable to respondent for any damages that are caused or associated with such termination, and TxDOT will not be required to give prior notice.

4.03 INVOICING: No payment will be made under the contract without the prior submission of detailed and correct invoices which comply with the following requirements:

- (a) Each invoice must be submitted not later than the 15th day of the month after the goods have been delivered or services have been provided, or as otherwise stated on the contract. An electronic copy of the invoice must be sent as an email attachment to the email address shown on the purchase order. A link to a copy of the invoice will not be accepted in lieu of an electronic or physical copy of the invoice. If the vendor cannot submit invoices electronically as an email attachment, vendor must mail a hard copy to the physical address noted on the purchase order.
- (b) The invoice must, at a minimum, show the following:
 - (1) Vendor name as it appears on the purchase order.
 - (2) Remit-to address.
 - (3) Email address (if applicable).
 - (4) Employer Identification Number (EIN), federal tax I.D., or a valid Texas Identification Number (TIN).
 - (5) Complete PO number.
 - (6) Telephone number.
 - (7) Name of person designated to answer questions regarding the invoice.
 - (8) Description of item or service as it appears on the PO or pricing schedule in the same order as listed on purchase order or pricing schedule. Item numbers must correspond with the item numbers on the PO or pricing schedule.
 - (9) Quantity, unit of measure, unit price, and extended price of each line item.
 - (10) Grand total.
 - (11) Shipment date of merchandise or date of service. If lease, include payment number (e.g., 1 of 36).
 - (12) Any additional requirements as stated in the solicitation or specification.

4.04 PAYMENT: Payment for goods or services purchased with state funds is made by warrants or by direct deposit. Direct deposit is the preferred method of payment. No penalty for late payment will be incurred by TxDOT if payment is made in thirty (30) days or less from receipt of goods, services, or a correct invoice, whichever is later. Payments under this contract are subject to the availability of funds.

Additional information and a Direct Deposit Authorization application may be found at <https://comptroller.texas.gov/programs/systems/direct-deposit/>.

Payment will be made in accordance with Government Code Chapter 2251:

- (a) On a monthly basis and within thirty (30) days from receipt of a correct invoice for TxDOT-accepted goods or services.
- OR**
- (b) The service was completed to the satisfaction of TxDOT and within thirty (30) days from receipt of a correct invoice or billing statement.
- OR**
- (c) As otherwise stated in the solicitation.

NOTE: Texas Department of Transportation (TxDOT) offers an opportunity to participate in its Early Payment Program to accelerate payments in exchange for a discount. Additional information may be found at <http://www.txdot.gov/business/vendors/epp.html> or the Priority Invoice and Early Payment Program form (Appendix B).

4.05 INTELLECTUAL PROPERTY

- (a) All intellectual property developed and created in the course of the services rendered pursuant to the contract are works for hire, and all intellectual property rights, including but not limited to, publication rights, copyrights, trademarks, patents, and trade secrets to all products and materials developed and created pursuant to the contract, shall be exclusively owned by TxDOT. Vendor must provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the contract. To the extent that title to any work created under the contract is held by operation of law to not vest exclusively in TxDOT, such work is hereby irrevocably assigned to TxDOT.
- (b) Vendor must ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents, and trade secrets, are secured from all suppliers, contractors, and subcontractors.
- (c) When applicable, each vendor must obtain necessary licenses, copyrights, trademarks, or patents for TxDOT's use.
- (d) Vendor must not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets, or patents for any intellectual property developed in performance of the services authorized.
- (e) VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS SET FORTH IN SECTION 4.15 BELOW.

4.06 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS: As required by 1 TAC Chapters 206 and 213:

- (a) Effective April 18, 2020, state agencies shall procure products which comply with the State of Texas Accessibility Requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Vendor represents and warrants that technology to be provided to TxDOT and for TxDOT is in compliance with these requirements.
- (b) Vendor must provide accessibility information for the purchased goods or services in accordance with 1 TAC §213.18 (b).

4.07 CYBER SECURITY TRAINING: In accordance with Government Code §2054.5192, each vendor employee or subcontractor employee that will have access to a TxDOT computer system or database must complete a TxDOT-approved cyber security training program that is certified under Government Code §2054.5192. The training program must be completed by each vendor during the term of the purchase order and during any renewal period. Vendor must provide verification of completion of the cyber security training program in a method designated by TxDOT.

4.08 SITE VISITS: Prior to and after award of the contract, designated TxDOT representatives may conduct unannounced visits to inspect vendor's and its subcontractor's facilities during normal business hours to monitor compliance in accordance with TxDOT specifications or carry out performance audits of the service.

4.09 NON-WAIVER OF RIGHTS: Nothing in this contract shall be construed as a waiver of the state's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the state of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the state of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TxDOT does not waive any privileges, rights, defenses, or immunities available to TxDOT by entering into this contract or by its conduct prior to or subsequent to entering into this contract.

4.10 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS: Vendor has no authority to act for or on behalf of TxDOT or the state of Texas except as expressly provided for in this contract. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the state of Texas or TxDOT.

4.11 VENUE AND JURISDICTION; APPLICABLE LAW: Venue for any suit concerning the solicitation and any resulting contract is fixed in any court of competent jurisdiction in Travis County, Texas. The solicitation and any resulting contract shall be governed by and construed in accordance with the laws of the state of Texas without regard to the conflict of laws provisions.

4.12 VENDOR ASSIGNMENTS: Vendor hereby assigns TxDOT any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States (15 U.S.C.A. Chapter 1), and which arise under the antitrust laws of the state of Texas (Business & Commerce Code, Title 2, Chapter 15).

4.13 FORCE MAJEURE: TxDOT may, at its sole discretion, grant relief for time only from performance of the contract if vendor is prevented from performance by an act of war, order of legal authority, act of God, force of nature, pandemic, public health crisis, or other unavoidable cause not attributable to the fault or negligence of vendor (any such event or cause referred to herein as "force majeure"). To obtain relief based on force majeure, vendor must file a written request with TxDOT describing the events, dates, and effect of the events on vendor's ability to perform its obligations under the contract. Vendor must inform TxDOT in writing within three (3) business days of the existence of such force majeure; failure to do so will waive the right to seek relief under this Section 4.12. Upon an event of force majeure, vendor must use commercially reasonable efforts to commence performance whenever and to whatever extent possible without delay. An event of force majeure does not excuse vendor from any obligation under the contract unless TxDOT grants relief in writing in response to a request for relief under this Section 4.13.

4.14 RIGHT TO AUDIT

- (a) The state auditor may conduct an audit or investigation of vendor or any other entity or person receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, vendor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
- (b) TxDOT's internal auditors may conduct an audit or investigation of vendor or any other person receiving funds directly under the contract or indirectly through a subcontract under the contract. TxDOT has the right to audit vendor's books and records pertaining to the service during normal work hours. Vendor or any other entity that is the subject of an audit or investigation by TxDOT must provide TxDOT's internal auditor access to any information TxDOT considers relevant to the investigation or audit.
- (c) Vendor will ensure that this section concerning the authority of the state auditor and TxDOT to audit funds received indirectly by subcontractors through vendor and the requirement to cooperate is included in any subcontract it awards.

4.15 INDEMNIFICATION: Acts or Omissions

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringement:

- (a) VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS INVOLVING VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE AND SERVICE MARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED UNDER THE CONTRACT; AND/OR (3) TXDOT'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDOT BY VENDOR OR OTHERWISE TO WHICH TXDOT HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, VENDOR WILL REIMBURSE TXDOT AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES ARISING FROM ANY SUCH CLAIM. IF TXDOT DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF TXDOT IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDOT WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TXDOT'S COUNSEL.
- (b) VENDOR WILL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY:
 - (1) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TXDOT, OR
 - (2) ANY USE OF THE PRODUCT OR SERVICE BY TXDOT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT BETWEEN VENDOR AND TXDOT.
- (c) IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TXDOT PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TXDOT, MUST), AT VENDOR'S SOLE OPTION AND EXPENSE:
 - (1) PROCURE FOR TXDOT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR

- (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY-EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TXDOT'S USE IS NON-INFRINGEMENT.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- (a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TXDOT AND/OR THE STATE SHALL NOT BE LIABLE TO VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.
- (b) VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4.16 DAMAGE TO TXDOT PROPERTY: Vendor shall be liable for damage to TxDOT's equipment, workplace, and its contents resulting from vendor's or vendor's subcontractor's work or negligence in performance of the work by vendor's or subcontractor's personnel or equipment.

4.17 PUBLIC INFORMATION ACT AND CONFIDENTIALITY: Information, documentation, and other material in connection with the solicitation or any resulting contract may be subject to public disclosure pursuant to the Public Information Act.

In accordance with §2252.907 of the Government Code, vendor is required to make any information created or exchanged with the state pursuant to the contract, and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the state. All information created by or accessible to a vendor while providing a good or service for TxDOT shall be treated by vendor as confidential. If applicable to a service, upon award of the contract, vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Vendor and its employees or subcontractors must not divulge any information related to TxDOT business at any time to a third party without the prior written approval of TxDOT. Vendor will notify TxDOT within 24 hours of receipt of any third-party requests for information that was provided by TxDOT for use in performing the contract, including the contract itself. Upon request by TxDOT, vendor agrees to promptly provide any information created or exchanged with the state pursuant to the contract to TxDOT in any format reasonably required by TxDOT, including, without limitation, portable document format (PDF) and HTML.

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4.18 BUY TEXAS: In accordance with Government Code §2155.4441, vendor agrees that during the performance of a contract for services, vendor shall purchase products and materials produced in the state of Texas when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside the state.

4.19 COMPETENCE OF VENDOR: To be entitled to consideration, vendor must have available the necessary organization and facilities to fulfill all the requirements under the contract. Only personnel trained to perform the solicited services or, if applicable, licensed to perform such services must be employed under and for the contract. Vendor must, at its own cost, obtain any licenses, certifications and permits required for the performance of the service.

4.20 CORRECTIONS TO WORK: If TxDOT determines it necessary to require corrections to work due to errors made by vendor, vendor must correct the work at no additional cost to TxDOT.

4.21 IT SERVICE CONTRACTS SECURITY: Vendor will implement appropriate administrative, physical, and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. Vendor will immediately report to TxDOT any security incident of which it becomes aware. Vendor will submit for approval by TxDOT and conform its policies and procedures relating to the implementation of security safeguards to comply with TxDOT's information resources security program pursuant to 1 TAC §202.

4.22 NOTICES: Any notices required under the contract will be in writing and sent by hand delivery or by U.S. Mail, certified, return receipt requested to vendor at vendor's address specified on page 1 of the purchase order to TxDOT at 125 E. 11th Street, Austin, TX 78701-2483. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this section by written notification to the other party.

4.23 PUBLIC DISCLOSURE: No public disclosures or news releases pertaining to this contract shall be made without prior written approval of the Texas Department of Transportation.

4.24 DISASTER RECOVERY PLAN: If required in the solicitation, respondent must provide TxDOT descriptions of its business continuity and disaster recovery plans in accordance with 13 TAC §6.94(a)(9).

PART 5. INSURANCE

5.01 PRIOR TO CONTRACT AWARD: Vendor must provide the required TxDOT insurance form upon written notice from TxDOT. Vendor must not perform services under the contract until this form is received by TxDOT. Failure to provide proof of insurance within the time frame requested by TxDOT may result in vendor's response being declared non-responsive and the contract being awarded to the next responsive, responsible respondent.

5.02 DURING TERM OF CONTRACT: Vendor must maintain all required insurance coverage throughout the term of the contract. Vendor must provide a correct TxDOT insurance form each time its insurance is renewed or updated. Failure to provide this form promptly may be cause for discontinuance of the work and termination of the contract.

5.03 WAIVER OF SUBROGATION ENDORSEMENT: Vendor's workers' compensation insurance policy must have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. Vendor must pay the deductible amount.

5.04 WORKERS' COMPENSATION INSURANCE: Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and 28 TAC, Chapter 110). Vendor is responsible for both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The state of Texas is not liable to vendor or its employees for any unemployment or workers' compensation coverage or any federal or state withholding requirements.

5.05 WORKERS' COMPENSATION INSURANCE FOR BUILDING AND CONSTRUCTION SERVICES: Vendor is responsible for providing workers' compensation insurance for building and construction services. Building or construction includes:

- (a) Erecting, or preparing to erect, a structure including a building, bridge, roadway, public utility facility, or related appurtenance; or

- (b) Remodeling, extending, repairing, or demolishing a structure; or
- (c) Otherwise improving real property or an appurtenance to real property through similar activities.

Vendor must provide workers' compensation insurance for building and construction services in accordance with 28 TAC §110.110(c)(7).

- (a) Definitions (applicable only to this Section 5.05):

- (1) Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84) showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- (2) Duration of the project - includes the time from the beginning of the work on the project until vendor's/person's work on the project has been completed and accepted by the governmental entity.
- (3) Persons providing services on the project ("subcontractor" in Texas Labor Code §406.096) - includes all persons or entities performing all or part of the services vendor has undertaken to perform on the project, regardless of whether that person contracted directly with vendor and regardless of whether that person has employees. This includes, without limitation, independent vendors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (b) Vendor must provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Government Code §401.011(44), for all employees of vendor providing services on the project, for the duration of the project.
- (c) Vendor must provide a certificate of coverage to TxDOT prior to being awarded the contract.
- (d) If the coverage period shown on vendor's current certificate of coverage ends during the duration of the project, vendor must, prior to the end of the coverage period, file a new certificate of coverage with TxDOT showing that coverage has been extended.
- (e) Vendor must obtain from each person providing services on a project, and provide to TxDOT:
 - (1) A certificate of coverage, prior to that person's beginning work on the project, so TxDOT will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) No later than seven (7) business days after receipt by vendor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (f) Vendor must retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) Vendor must notify the governmental entity in writing by certified mail or personal delivery, within ten (10) business days after vendor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (h) Vendor must post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- (i) Vendor must contractually require each person with whom it contracts to provide services on a project, to:
 - (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Government Code §401.011(44), for all its employees providing services on the project, for the duration of the project.
 - (2) Provide to vendor, prior to that person's beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
 - (3) Provide vendor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (4) Obtain from each other person with whom it contracts, and provide to vendor:
 - (a) A certificate of coverage, prior to the other person's beginning work on the project.
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
 - (6) Notify TxDOT in writing by certified mail or personal delivery, within ten (10) business days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
 - (7) Contractually require each person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing the purchase order or providing or causing to be provided a certificate of coverage, vendor is representing to TxDOT that all employees of vendor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject vendor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) Vendor's failure to comply with any of these provisions is a breach of contract by vendor which entitles TxDOT to declare the contract void if vendor does not remedy the breach within ten (10) business days after receipt of notice of breach from the governmental entity.

5.06 COMMERCIAL GENERAL LIABILITY INSURANCE: Bodily Injury/Property Damage. Required coverage must, at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

5.07 COMMERCIAL AUTOMOBILE POLICY: Required coverage must, at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

PART 6. VENDOR PERSONNEL MANAGEMENT

6.01 INDEPENDENT CONTRACTOR: It is expressly understood and agreed to by both parties that TxDOT is contracting with vendor as an independent contractor. As such, vendor understands and agrees that individuals performing services in connection with the contract are not state employees and that vendor will be responsible and liable for the safety, injury, and health of its and its subcontractor's working personnel while its employees or subcontractor's employees are performing work for TxDOT. Should vendor subcontract any of the services required in the contract, vendor expressly acknowledges and agrees that TxDOT is in no manner liable to any subcontractor of vendor. In no event will this provision relieve vendor of the responsibility for ensuring that all services rendered under all subcontracts are rendered in compliance with the contract.

6.02 ALCOHOL, DRUG, AND SMOKE-FREE WORKPLACE: TxDOT is committed to maintaining an alcohol and drug-free workplace. Possession, use of, or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. If any employee of the vendor violates this requirement, TxDOT may terminate the contract for cause, in addition to seeking any other available remedies. Vendor's employees must comply with TxDOT's policy prohibiting smoking in TxDOT buildings.

6.03 REPLACEMENT OF PERSONNEL: If TxDOT determines that an employee or subcontractor of vendor performing any part of vendor's work under this contract is unable to perform the work in accordance with the service requirements or to communicate effectively or is, in the opinion of TxDOT, otherwise objectionable, vendor must immediately remove that employee or subcontractor.

6.04 LABOR/MATERIAL/EQUIPMENT: Vendor must provide all labor, material, and equipment necessary to furnish the goods or perform the service(s) throughout the term of the contract. All employees of vendor must be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children, or other relatives of vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the vendor.

6.05 ENGLISH-SPEAKING STAFF: Vendor must, at all times, have a minimum of one English-speaking employee on the job. All employees must be well-groomed and appropriately dressed when on TxDOT property.

6.06 FELONY CRIMINAL CONVICTIONS: Vendor represents and warrants that neither vendor nor any of vendor's employees have been convicted of a felony criminal offense or that, if such a conviction has occurred, vendor has fully advised TxDOT as to the facts and circumstances surrounding the conviction and vendor agrees to defend, hold harmless, and indemnify TxDOT from any loss or claim due to any such employees.

6.07 SUBCONTRACTING REQUIREMENTS: In accordance with Government Code §§2161.181-182 and pursuant to the CPA Historically Underutilized Business (HUB) Rules and Transportation DBE/HUB/SBE Rules (relating to Disadvantaged Business Enterprises, HUB and Small Business Enterprises, DBE/HUB/SBE), all state agencies entering into a contract with an expected value of \$100,000 or more over the life of the contract (including renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable, the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a HUB Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>.

6.08 PAYMENT OF SUBCONTRACTORS: As provided by Government Code §2251.022, vendor must pay a subcontractor the appropriate share of any payment vendor receives from TxDOT not later than the 10th day after the date the vendor receives the payment. The appropriate share is overdue on the 11th day after the date vendor receives the payment.

6.09 VENDOR TITLE VI AFFIRMATIONS: Vendor represents and warrants the following with regard to the work performed by it under the contract:

- (a) Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, or disability in the performance of this contract, including without limitation in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the contract or such other remedy as TxDOT deems appropriate.
- (b) In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by vendor of vendor's and subcontractor's obligations under its contract relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- (c) During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to collectively in this subsection (c) as the "contractor") agrees as follows:
 - (1) Compliance with Regulations: The contractor will comply with the acts and the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the acts and regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 - (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the acts and regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - (4) Information and Reports: The contractor must provide all information and reports required by the acts, regulations, and directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such acts, regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor must so certify to TxDOT or the FHWA, as appropriate, and must set forth what efforts it has made to obtain the information.
 - (5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this contract, TxDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a) Withholding payments to the contractor under the contract until the contractor complies; and/or
 - (b) Cancelling, terminating, or suspending a contract, in whole or in part.

- (6) Incorporation of Provisions: The contractor must include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the acts, the regulations and directives issued pursuant thereto. The contractor must take action with respect to any subcontract or procurement as TxDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided that if the contractor becomes involved in litigation with, or is threatened with litigation by, a subcontractor or supplier because of such direction, the contractor may request TxDOT to enter into any litigation to protect the interests of TxDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

- (d) The contractor agrees to comply with the provisions of Appendix A attached hereto, which is incorporated by reference and made a part hereof.

6.10 E-VERIFY: Pursuant to Executive Order RP-80, vendor certifies and ensures that for all contracts for services, vendor shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this agreement to determine the eligibility of:

- (a) All persons employed by vendor during the term of this agreement to perform duties within the State of Texas.
- (b) All persons, including subcontractors, assigned by vendor to perform work pursuant to this agreement within the United States of America.

PART 7. DISPUTE RESOLUTION

7.01 DISPUTE RESOLUTION: The dispute resolution process provided for in Government Code Chapter 2260 and 43 TAC §§9.1 and 9.2 must be used by TxDOT and the vendor to attempt to resolve disputes arising under the contract. Notwithstanding any provision of the contract to the contrary, unless otherwise agreed in writing by TxDOT, vendor must continue performance and will not be excused from performance during the period of contract claim or dispute is pending; however, vendor may suspend performance during the pendency of such claim or dispute if vendor has complied with all provisions of Government Code §2251.051, and such suspension of performance is expressly applicable and authorized under that law.

PART 8. CONTRACT TERMS

8.01 TERM OF CONTRACT: The term of the contract will be as stated on the purchase order.

8.02 ORDER OF PRECEDENCE: In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies will be resolved by reference to the documents in the order specified on the purchase order.

8.03 TERMINATION OF A CONTRACT

- (a) **FOR CAUSE:** If vendor fails to provide a good or service according to the provisions of the contract or fails to comply with any term or condition of the contract, or if any representation or certification made in the contract or any related document is false, incomplete, or inaccurate, vendor shall be in default under the contract and TxDOT may immediately terminate all or any part of the contract upon written notice to vendor. Termination is not an exclusive remedy but will be in addition to any other remedies TxDOT may have by law, in equity, or under the contract.
- (b) **FOR CONVENIENCE:** The contract may be terminated by TxDOT in whole or in part, without cost or penalty, by providing thirty (30) calendar days written notice. In the event of such termination, vendor must, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. TxDOT will be liable only for payments for goods or services ordered before the termination date. With regard to services, TxDOT will pay vendor the contract price prorated for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph will not relieve vendor of any obligation or liability that has occurred prior to termination. Vendor must refund any balance of unused prepaid funds.
- (c) **FUNDING:** The contract may be terminated by TxDOT in whole or in part, without cost or penalty, pursuant to §4.02 of these Terms and Conditions.

8.04 REMEDIES: If vendor is in default under the contract, in addition to its right of termination set forth in Section 8.03, TxDOT may, in its sole discretion:

- (a) Purchase the goods or services elsewhere and charge any increase in cost to the defaulting vendor.
- (b) Proceed by appropriate court action to enforce the provisions of the contract.
- (c) Exercise any other right, remedy, or privilege which may be available to it under law, equity, or this contract.

The exercise of any of the foregoing remedies will not constitute a termination of the contract unless TxDOT notifies vendor in writing that TxDOT has elected to terminate the contract prior to the exercise of such remedy. Vendor shall be responsible for all costs and expenses, including court costs, incurred by TxDOT with respect to the enforcement of any of the remedies listed herein. The remedies listed above and elsewhere in this contract are not exclusive. Failure to exercise a remedy shall not constitute a waiver by TxDOT.

8.05 SALE OR ASSIGNMENT: Vendor may not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from TxDOT. Any attempted assignment in violation of this provision is void and without effect. Vendor must provide written notification of changes to company name, address, telephone number, and other contact information to TxDOT as soon as possible but not later than thirty (30) calendar days from the date of change.

8.06 RENEWAL OF CONTRACT: The contract may be renewed by TxDOT, in its sole discretion, for up to three additional like periods of time at the same terms and conditions with prior written notice to vendor, or as otherwise stated in the solicitation.

8.07 EXTENSION OF CONTRACTS

- (a) TxDOT reserves the right to extend a contract, for time only, for a period not to exceed 180 calendar days past the stated term to allow vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the contract.
- (b) A contract in its final renewal period may be further extended for time and money for a period up to ninety (90) calendar days at the option of TxDOT.
- (c) Vendor may request a time only extension of a contract by submitting written justification to TxDOT. TxDOT will approve or decline the request for extension in writing. An extension will be effective only if it is issued by the TxDOT Procurement Division in the form of a purchase order change notice.

8.08 SEVERABILITY CLAUSE: In the event that any provision(s) of this contract may later be determined to be invalid, void, or unenforceable, then the remaining provisions of this contract will remain in full force and effect.

8.09 AMENDING THE CONTRACT: All alterations, additions, or deletions to the contract must be in writing and mutually agreed upon by both parties and put into effect with a purchase order change notice issued by TxDOT. Vendor will not be entitled to payment for any additional services, work, or products that are not authorized by a properly-executed purchase order change notice. All alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without a purchase order change notice and will become effective on the date designated by such law or by regulation.

8.10. THIRD-PARTY BENEFICIARIES: The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person will have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

8.11 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

- (a) By submitting the response, respondent binds itself, its respective successors, and assignees to the faithful performance of the terms and conditions and provisions of a contract issued to respondent in connection with the solicitation.
- (b) Expiration or termination of the contract for any reason will not release vendor from any liabilities or obligations set forth in the terms and conditions and contract or any work orders that are expressly stated to survive any such expiration or termination or which by their nature are intended to be applicable following such expiration or termination, including any and all provisions regarding warranty, confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification. Upon expiration or termination of the contract for any reason, TxDOT will retain ownership of all associated work products and documentation obtained from or created by vendor under the contract. Vendor must deliver all documents or other work product to TxDOT upon request, including original versions if so specified in the request.
- (c) The term of service stated on the purchase order is binding on vendor regardless of the term on the originating agency contract.

Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to in this Appendix A as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- Federal-Aid Highway Act of 1973 (23 U.S.C. §324 et seq.) (prohibits discrimination on the basis of sex).
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 et seq.) (prohibits discrimination on the basis of age).
- The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are federally funded or not).
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681, et seq.).

Revised June 2022

Appendix B



EARLY PAYMENT PROGRAM

TxDOT has partnered with Oxygen Finance Americas, Inc. to offer all bidders and active TxDOT vendors the opportunity to enroll in the Early Payment Program (EPP). The EPP gives vendors more flexibility and control of their business and finances. Benefits include:

- Electronic invoice submissions sent to one email address for all TxDOT divisions
- Invoices are time-stamped upon receipt
- Rejection notices are usually sent within 1 business day with instructions on how to revise & resubmit for payment
- Payments are typically made within 10 business days*, providing you cash sooner
- Monthly remittance statements are provided to EPP vendors for reconciliation
- Live supplier support specialists are available to help EPP vendors through all stages of invoicing and payments

Please fill out the information below and return this form with your completed response

Company: _____	Tax ID/EIN: _____
Contact Name: _____	Title: _____
Address: _____	
Email: _____	Phone: _____
Billing Contact: _____	Title: _____
Address: _____	
Email: _____	Phone: _____

OPTIONS (Please check one):

- ☐ Yes, I would like to enroll in the EPP with the following terms for all future invoices: _____ % / 10 Days / Net 30 **
 Texas State Agencies are allowed to make early payments to vendors, but are required to take a discount in return. (Texas Government Code, Chapter 2155.382). TxDOT allows EPP vendors to determine the invoice discount rate (%) that best suits their business needs.
- ☐ I confirm that I am an authorized representative of this company and that if TxDOT pays any Invoiced Debt owed to the aforementioned company under or in connection with any Contract prior to the date by which such payment would otherwise be required to be made under the terms of that Contract, TxDOT shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, an Early Payment Discount which it will deduct and retain from that Invoiced Debt. These terms will apply to all invoices unpaid as of the date of signature as printed on this form. Early payment discounts are dynamically calculated, with a target payment date of 10 days from the date of invoice acceptance. The final discount taken is proportionate to the number of days the payment is accelerated. A discount is taken ONLY if payment is made before 30 days from the date of invoice acceptance.
- ☐ I confirm that I am an authorized representative of this company and agree to the Oxygen Network Supplier Terms of Use found at <http://ftp.dot.state.tx.us/pub/txdot-info/fin/early-pmt/oxygen-network-terms.pdf>
- ☐ I'm interested in the EPP, but would like a supplier support specialist to call me at this number _____
- ☐ I am already enrolled in the EPP
- ☐ No, I am not interested at this time

Printed Name _____

Signature _____

Date _____

*Please note: Direct deposits post 1-3 business days after the payment date and paper checks could take up to 5 business days to receive

**TxDOT reserves the right to approve or reject any proposed rates.

To learn more about the program and its benefits, visit www.txdot.gov/business/vendors/epp.html

To speak with a supplier support specialist, call 844.893.8837 or email at earlypay@txdot.gov

THIS PAGE SHOULD BE RETURNED WITH YOUR COMPLETED RESPONSE

EXECUTION OF PROPOSAL
RFP NO. 601440000040183

By signature hereon, Respondent certifies that all statements and information submitted in the response to this RFP are current, complete, and accurate, including without limitations all statements, certifications, affirmations and representations contained in the Terms and Conditions..

Respondent has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, or institution has (1) violated the anti-trust laws of the state of Texas under Texas Business and Commerce Code, Chapter 15, or the federal anti-trust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

By signing this response, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

Under Government Code §2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section §2155.004, Government Code, the vendor (Respondent) certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Under Government Code §669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the Texas Department of Transportation (TxDOT) or any other state agency, was involved with or has any interest in this Proposal or any contract resulting from this RFP. If Respondent employs or has used the services of a former executive head of TxDOT or other state agency, then Respondent must provide the following information:

Name of former Executive: _____

Name of State Agency: _____

Date of separation from State Agency: _____

Date of employment with Respondent: _____

Respondent agrees that any payments due under this purchase order will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the state of Texas.

TxDOT is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (<https://www.sam.gov/portal/public/SAM>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

EXECUTION OF PROPOSAL
RFP NO. 601440000040183

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Respondent or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

EXECUTION OF PROPOSAL
RFP NO. 601440000040183

Respondent represents and warrants that the individual signing this Execution of Proposal is authorized to sign this document on behalf of Respondent and to bind Respondent under any contract resulting from this Proposal.

RESPONDENT (COMPANY): _____

SIGNATURE: _____

NAME (TYPED/PRINTED): _____

TITLE: _____ DATE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____

EMAIL ADDRESS: _____

EMPLOYER'S IDENTIFICATION NUMBER (EIN): _____

If an invoice will be submitted by, and/or payment made to an EIN or company name different from the vendor on the response, respondent must complete the following to authorize payment:

EIN of company authorized to invoice for vendor: _____

Name of invoicing company: _____

EIN of company authorized to receive payment: _____

Name of company to be paid: _____

EXECUTION OF PROPOSAL
RFP NO. 601440000040183

PREFERENCES:

In the case of a tie between two or more respondents, the award will be made in accordance with preferences as outlined in Rule 34TAC §20.306. If a tie still exists after review of preferences claimed by respondents, TxDOT will draw lots to break the tie.

Check below if preference is claimed under Rule 34TAC §20.306.

Tie – Bid Preferences

- _____ 1. Supplies, materials or equipment produced in Texas or offered by a Texas bidder
- _____ 2. Agricultural products produced or grown in Texas
- _____ 3. Agricultural products and services offered by Texas bidder
- _____ 4. USA produced supplies, material or equipment
- _____ 5. Products produced at facilities located on formerly contaminated property
- _____ 6. Products and services from economically depressed or blighted areas
- _____ 7. Goods produced or offered by a business owned by a service-disabled veteran who is a Texas resident

Source Preferences

- _____ 1. Products of persons with mental or physical disabilities
- _____ 2. Vendors that meet or exceed air quality standards. For contracts to be performed, in whole or in part, in a designated non-attainment area or an affected county, as those terms are defined by Health and Safety Code §386.001 Texas Emissions Reduction Plan.
- _____ 3. Manufacturer that has a recycle program for computer equipment
- _____ 4. Contractor providing foods of higher nutritional value

Specification Preferences

- _____ 1. Products made of recycled materials, remanufactured, or environmentally sensitive materials including recycled steel
- _____ 2. Energy efficient products
- _____ 3. Rubberized asphalt paving materials
- _____ 4. Recycled motor oil and lubricants

THE EXECUTION OF PROPOSAL SHALL BE RETURNED WITH THE RESPONSE. FAILURE TO RETURN THE EXECUTION OF PROPOSAL WILL RESULT IN THE RESPONSE BEING CONSIDERED NON-RESPONSIVE.

Attachment B

Historically Underutilized Business Participation

I.3 Historically Underutilized Business Participation

In accordance with Texas Government Code [§2161.252](#), a proposal that does not contain a [HUB Subcontracting Plan \(HSP\)](#) is non-responsive and will be rejected without further evaluation. In addition, if the Department determines that the HSP was not developed in good faith, it will reject the proposal for failing to comply with material specifications based on the solicitation.

I.3.1 Introduction

The Department is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. The Department encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means.

Pursuant to [Texas Government Code §2161.181](#) and [§2161.182](#), and the Department's HUB policy and rules, the Department is required to make a good faith effort to increase HUB participation in its contracts. The Department may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

I.3.2 Department's Administrative Rules

The Department has adopted the CPA's HUB rules as its own. The Department's HUB rules are located in [Title 43, Part 1, Chapter 9, Subchapter L](#) of the Texas Administrative Code, and the CPA rules are located in [Title 34, Part 1, Chapter 20, Subchapter D, Division 1](#). If there are any discrepancies between the Department's administrative rules and this solicitation, the rules shall take priority.

I.3.3 HUB Participation Goal

The CPA has established statewide HUB participation goals for different categories of contracts in [34 T.A.C. §20.284](#). To meet or exceed the HUB participation goals, the Department encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This contract is classified as a service contract under the CPA rule, and therefore has a HUB Annual Procurement Utilization Goal of 26.0% per fiscal year.

I.3.4 Required HUB Subcontracting Plan

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

In accordance with [34 T.A.C. §20.285\(a\),\(1\),\(C\)](#) of the HUB Rules. State agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be

expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

The Department has determined that subcontracting opportunities are probable for this solicitation. As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.

In the HSP, a respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a respondent from completing the HSP requirement.

The Department shall review the documentation submitted by the respondent to determine if a good faith effort has been made, in accordance with solicitation and HSP requirements. During the good faith effort evaluation, The Department may, at its discretion, allow clarifications or enhancements to information submitted with the HSP.

If the Department determines that the respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with the advertised specifications. The reasons for rejection shall be recorded in the procurement file.

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

I.3.5 CPA Centralized Master Bidder's List

Respondents may search for HUB subcontractors in the CPA's [Centralized Master Bidders List \(CMBL\)/HUB Directory](#). For this procurement, the Department has identified the following class and item codes for potential subcontracting opportunities:

NIGP Class/Item Code: 961-30

Respondents are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

The Department does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

I.3.6 HUB Subcontracting Procedures – If a Respondent Intends to Subcontract

An HSP must demonstrate that the respondent made a good faith effort to comply with the Department's HUB policies and procedures. The following subparts outline the items that the Department will review in determining whether an HSP meets the good faith effort standard. A respondent that intends to subcontract must complete the HSP to document its good faith efforts.

I.3.6.1 Identify Subcontracting Areas and Divide Them into Reasonable Lots

A respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.

I.3.6.2 Notify Potential HUB Subcontractors

The HSP must demonstrate that the respondent made a good faith effort to subcontract with HUBs that have an active HUB certification. The respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

I.3.6.2.1 Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The respondent must determine which portions of work, including goods and services, will be subcontracted.

I.3.6.2.2 Use the appropriate method(s) to demonstrate good faith effort. The respondent can use either method(s) 1, 2, or 3:

I.3.6.3 Method 1: Respondent Intends to Subcontract with only HUBs:

The respondent must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms **100%** of all available subcontracting opportunities will be performed by one or more HUBs; or,

I.3.6.4 Method 2: Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):

The respondent must identify in the HSP and submit written documentation that one or more HUBs, with an active HUB certification, will be utilized; and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in this solicitation. Only HUB subcontractors that have an existing contract with the respondent for less than five years may be used to comply with the good faith effort requirements under this method.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, respondents may also use non-HUB subcontractors; or,

I.3.6.5 Method 3: Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):

The respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to minority or women trade organizations or development centers to assist in identifying potential HUBs of the subcontracting opportunities the respondent intends to subcontract.

Respondents must give minority or women trade organizations or development centers at least seven (7) business days prior to submission of the respondent's response for dissemination of the subcontracting opportunities to their members. A list of minority and women trade organizations is located on the CPA's website under the [Minority and Women Organization link](#).

- Written notification to at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
 - a description of the scope of work to be subcontracted,

- information regarding the location to review project plans or specifications,
- information about bonding and insurance requirements,
- required qualifications and other contract requirements, and
- a description of how the subcontractor can contact the respondent.

Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) business days prior to submission of the respondent's response unless circumstances require a different time-period, which is determined by the agency and documented in the contract file;

Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups; local, state and federal business assistance offices; and other organizations that provide assistance in identifying qualified applicants for the HUB program.

I.3.6.6 Written Justification of the Selection Process

The Department will determine if a good faith effort was made by the respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the respondent's good faith efforts in developing and submission of the HSP. The Department may require the respondent to submit additional documentation explaining how the respondent made a good faith effort in accordance with the solicitation.

A respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the respondent negotiated in good faith with qualified HUB bidders, and did not reject qualified HUBs, with an active HUB certification.

I.3.7 Method 4: Respondent Does Not Intend to Subcontract

When the respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The respondent must complete the "Self-Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes identified in Section I.3.5. In addition, the respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The respondent must agree to comply with the following if requested by the Department:

- provide evidence of sufficient respondent staffing to meet the solicitation requirements,
- provide monthly payroll records showing the respondent staff fully dedicated to the contract,
- allow the Department to conduct an onsite review of company headquarters or work site where services are to be performed, and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

I.3.8 Post-award HSP Requirements

The [HUB Subcontracting Plan \(HSP\)](#) shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of the contract with the successful respondent(s).

After contract award, the Department will coordinate a post-award meeting with the successful respondent to discuss HSP reporting requirements. The contractor must maintain business records

documenting compliance with the HSP, and must submit monthly subcontract reports to the Department by completing the HUB [“Prime Contractor Progress Assessment Report”](#) and **“HUB Subcontracting Plan (HSP) Progress Compliance Form - 2579”**. This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award, the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency's Contract Manager and/or HUB Program Office within 10 business days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, the Department will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for the Department's review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from the Department before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section I.3.6 of this solicitation (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, or participate in the Mentor Protégé Program).

For this reason, the Department encourages respondents to identify, as part of their HSP, multiple subcontractors able to perform the work in each area the respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow the Department to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract and will be subject to remedial actions. The Department may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program ([see 34 T.A.C. §20.585 relating to Debarment](#)) and ([see 34 T.A.C. §20.586 relating to Procedures for Investigations and Debarment](#)).



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - ☐ Section 2 c. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - No
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - ☐ Section 3 - Self Performing Justification
 - ☐ Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____
 (mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☐ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature

Printed Name

Title

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Item Number: _____ Description: _____

[illegible]

Page 1 of 1
(Attachment A)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If **Yes**, continue to SECTION B-4.)☐ - No / Not Applicable (If **No** or **Not Applicable**, continue to SECTION B-3 and SECTION B-4.)**SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.

b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____

State of Texas VID #: _____

Point-of-Contact: _____

Phone #: _____

E-mail Address: _____

Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____

Phone #: _____

Requisition #: _____

Bid Open Date: _____

(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

☐ - Not Applicable

4. Bonding/Insurance Requirements:

☐ - Not Applicable

5. Location to review plans/specifications:

☐ - Not Applicable



CERTIFICATE OF INSURANCE INSTRUCTIONS

BEFORE YOU SUBMIT THIS FORM, PLEASE ENSURE THE FOLLOWING:

- ♦ You have the most current 1950 insurance form. You can go to the following TxDOT Internet site to download this form:
<https://www.txdot.gov/inside-txdot/forms-publications/forms/requested-forms.html>
- ♦ You have entered the 11-digit Vendor Employee Identification Number (EIN), which includes your nine-digit FEIN (Federal Employee Identification Number)
- ♦ You have entered each authorized agent's complete address, telephone number, policy number with expiration dates, sign and date.
- ♦ You have provided all requested information on the form, which may be faxed or emailed but must be followed up with the originally signed forms to the e-mail address listed below.
- ♦ You are submitting the insurance form in connection with a purchase of services Purchase Order (PO).

Note: Each insurer must submit a separate form if more than one agent covers different types of insurance (one writes Workers' Compensation, but another writes Auto).

To avoid work suspension, an updated insurance form must be emailed to PRO_Insurance@txdot.gov one business day prior to the expiration date.

The named insured on the certificate and the name of the vendor, as it appears on the Purchase Order with TxDOT, must be the same. (**Note:** In a case where the Purchase Order is in the name of a party such as "John Jones dba Jones Construction Company," the named insured on the Certificate of Insurance may be "Jones Construction Company" and vice versa. The abbreviations of "Co." for "Company" and "Inc." for "Incorporated" are acceptable.). Liability limits listed are the minimum required; if higher limits are provided by the policy, enter the higher limits amount manually. Binder numbers are not acceptable for policy numbers. Accord insurance forms are not acceptable.

Over-stamping and /or typed entries made on the certificate of insurance by the agency /insuring company are unacceptable if such entries change the provisions of the certificate in any manner.

Workers' Compensation: Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and Title 28 Texas Administrative Code Chapter 110).

- ♦ The word STATUTORY, under limits of liability for Workers' Compensation, means that the benefits allowed under the Texas Workers' Compensation Law will be paid by the insurer.

Commercial General Liability Insurance includes: Not less than

- ♦ \$600,000 each occurrence

MANUFACTURERS' AND CONTRACTORS' LIABILITY insurance is *not* an acceptable substitute for COMMERCIAL GENERAL LIABILITY insurance.

Commercial Automobile Insurance: The coverage amount may be shown as a minimum:

- ♦ \$600,000 combined single limit, or
- ♦ Bodily Injury \$250,000 each person
- ♦ \$500,000 each occurrence
- ♦ Property Damage \$100,000 each occurrence

PERSONAL AUTOMOBILE LIABILITY Insurance is *not* an acceptable substitute for COMMERCIAL AUTOMOBILE insurance.

The signature of the agent shall be original in ink. Stamped / typed / printed signatures are unacceptable.

This form may be reproduced.

The certificate of insurance, once on file with TxDOT, is good for subsequent purchase orders *provided* adequate coverage is still in effect. With an original on file, other TxDOT offices will accept copies.

**EMAIL CERTIFICATES TO:
PRO_Insurance@TxDOT.gov**



CERTIFICATE OF INSURANCE FOR SERVICES

Form 1950
(Rev. 2/23)
Previous versions of this form may not be used.
Page 1 of 2

P.O. No. _____

Vendor Point of Contact (Employee Contact for the Insured Party, Not the Insurance Agent):

Name: _____ Telephone: _____ Email: _____

This certificate of insurance is provided for informational purposes only. This certificate does not confer any rights or obligations other than the rights and obligations conveyed by the policies referenced on this certificate. The terms of the referenced policies control over the terms of this certificate.

Prior to the beginning of work, the vendor shall obtain the minimum insurance and endorsements specified. Agents must complete the form providing all requested information and submit by fax, U.S. mail or e-mail as requested by TxDOT. Copies of endorsements listed below are not required as attachments to this certificate. Only certificates of insurance published by TxDOT are acceptable as proof of insurance. Commercial carriers' certificates are unacceptable.

Insured: _____

Street/Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Vendor EIN Number (11 digits): _____

Workers' Compensation Insurance Coverage:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone Number:		
Address:			City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Enter Limits of Liability	
Workers' Compensation					

DO NOT COMPLETE THIS FORM UNLESS WORKERS' COMPENSATION IS ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF TxDOT.

Commercial General Liability Insurance:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone Number:		
Address:			City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Enter Limits of Liability	
Commercial General Liability including: Bodily Injury Property Damage					

DO NOT COMPLETE THIS FORM UNLESS OTHER INSURANCE COVERAGE (i.e. GARAGE KEEPERS INSURANCE, OR OTHER) INCLUDES ADDITIONAL INSURED AND WAIVER OF SUBROGATION ENDORSEMENTS IN FAVOR OF TxDOT.

Commercial Automobile Insurance:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone Number:		
Address:			City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Enter Limits of Liability	
Commercial Automobile Bodily Injury Property Damage					

DO NOT COMPLETE THIS FORM UNLESS COMMERCIAL AUTOMOBILE LIABILITY INSURANCE INCLUDES ADDITIONAL INSURED AND WAIVER OF SUBROGATION ENDORSEMENTS IN FAVOR OF TxDOT.

Other Insurance Coverage: i.e. Garage keepers insurance, or other.

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			Carrier Phone Number:		
Address:			City:	State:	Zip:
Type of Insurance	Policy Number	Effective Date	Expiration Date	Enter Limits of Liability	
DO NOT COMPLETE THIS FORM UNLESS OTHER INSURANCE COVERAGE (i.e. GARAGE KEEPERS INSURANCE, OR OTHER) INCLUDES ADDITIONAL INSURED AND WAIVER OF SUBROGATION ENDORSEMENTS IN FAVOR OF TxDOT.					

AGENT CERTIFICATION

THIS IS TO CERTIFY to TxDOT, acting on behalf of the State of Texas, that the insurance policies above are in full force and effect.

Name of Insurance Company: _____	Name of Authorized Agent: _____
Company Address: _____	Agent's Address: _____
City: _____ State: _____ Zip: _____	City: _____ State: _____ Zip: _____
Authorized Agent's Phone Number Area Code (_____) _____	Original Signature of Authorized Agent _____ Date